GOVERNMENT OF MADRAS.

Scott. II-28—55.000—27-10-52

PW. (1954) Department.

~~Endorsement~~
~~D.O.~~
~~Memorandum~~
~~Lodged~~

No. 10874 F/54-3

Dated 30-3-1955.

FURTHER PAPERS.

Department.	Number.	Series.	Date.

10874

From
L.H. Cornish, Esq.,
State Port Officer,
P.B.No.13,
Madras 1.

To
The Secretary to Government,
Public Works Department,
Madras.

SECRETARIAT
10 FEB 1954
PUBLIC WORKS DEPARTMENT

10874

No.4267 G1/53-2, dated 2-2-54.

Sir,

Sub:- Detention of sailing vessels - Suspected to have been over-loaded at the port of Mangalore.

Ref:- Government Memo No.78497-F/51-1, P.W., dated 20-9-51 issuing instructions on the procedure to be followed in cases in question as to validity of any Act etc. is involved.

I have to state that the Port Officer, Mangalore, withheld the port clearance of Galbat Hemavathy and Machwa Betal Prasad for reasons of overloading and thus showing a lesser free board thereby endangering the safety of the crews, vessels and cargo as per circular instructions of the Officer on Special Duty (Sailing Vessels) Bombay. The vessels on being lightened to permit safe free board were granted clearance by the Port Officer, The Port Officer, Mangalore was throughout in contact with the Principal Officer, Mercantile Marine Department, Madras. The suits under reference are an outcome of the action of the Port Officer for detaining the vessels.

2. The Port Officer, Mangalore is taking up the matter with the Principal Officer, Mercantile Marine Department, Madras and the Director General of Shipping, Bombay - Vide his letter No.3537/53-19, dated 21-1-54 addressed to the Principal Officer, Mercantile Marine Department, Madras with its enclosures - copies enclosed.

Yours faithfully,

State Port Officer.

Encls.
1. Copy of Mangalore P.O's No.3537/53-19, d.21-1-54 and endorsements to the
2. Copy of suit notices-No.13 & 14 of 1954 d.21-1-54.
3. -do- affidavits.
4. Telegram from Dalal Pais d. 19-11-53 and S.P.O's endt. 21-11-53
5. Petition d.21-11-53 from Sri J.S.Pais Mangalore and S.P.O's endt. d.23-11-53.
6. P.O. Mer. Mar. Dept's d. 25-11-53 and encl.
7. -do- endts: d. 25-11-53 and 26-11-53
8. Copy of Mangalore P.O's letter d.23-11-53 with copy of enclosres.

P.4.

From: [illegible]
To: [illegible]
Subject: [illegible]
Date: [illegible]
Ref: [illegible]

No. [illegible]

Subject: [illegible]

Dear [illegible]

[illegible]

Yours [illegible]

I

From
The Port Officer, Mangalore,
To the Principal Officer, Mercantile Mar. Department, Madras,
No.3537/53-19, dated 21-1-54.

Detention of sailing vessels - suspected to have been overlouded at the port of Mangalore.
Ref:- Correspondence resting with your Endt.No.SVY/1990 dated 8-1-1954.

I have herewith enclosed copies of two suit notices received in this office for favour of kind perusal.

As regards expenditure, I am in correspondence with the Public Prosecutor of South Kanara and the estimate of expenditure will be intimated on receipt of his reply.

I am of the opinion that this is a case which involves a question of the validity of Central enactment and therefore I request necessary instructions may please be issued for preparing counter affidavit. In this connection a kind reference is invited to Government of Madras Memo No.78487/F/51-1(P.W) dated 20-9-51 communicated in State Port Officer's Endt.No.3353 G1/51-1, dated 28-9-1951.

The Law Officer who deals with the case is the District Munsiff, South Kanara, Mangalore.

---

x x

Copy together with copies of suit notices and affidavit submitted to the State Port Officer, Madras in continuation of correspondence resting with this office letter No.3571/53-3, dated 21-12-53 submitted in reply to State Port Officer's Memo No.4276 G1/53-1 dated 12-12-1953 and also with reference to State Port Officer's Endt. No.3353 G1/51-1, dated 28-9-51.

II

IN THE COURT OF THE DISTRICT MUNSIFF OF SOUTH KANARA,

O.S.SUIT NO. 13, of 1954,

Saul Panduranga Ahalankar by
Special Power of attorney holder
Sri N. Datta Naik, - Plaintiff.

Sri M.V.Kamath, - Vakil/Advocate

R.G.Naridas - Defendant

To

Defendant R.G. Naridas Esq., Port Officer,
Mangalore Town.

WHEREAS the Plaintiff has instituted a suit against you for the reliefs claimed in the plaint, copy of which is enclosed herein you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the 27th day of February 1954, at 11 o'clock in the forenoon, to answer the claim; and as the day fixed for your appearance is appointed for the final disposal of the settlement of suit, you must be prepared issues you are directed to produce on that day all the witnesses upon whose evidence documents upon which you intend to rely in support of your defence.

Notice:- (1) Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the

the Court and/or depositing the necessary expenses.

(2) If you admit the claim you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

Take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence,

(Also take notice that in default of your filing an address for service before the day mentioned you are liable to have your defence struck out.)

Given under my hand and the seal of the Court, this 19th day of Jan. 1954.

(By Order)

(Sd) M.V.Kamath
Vakil Advocate for Plaintiff.

(Sd.)
Central Nazir.

III

IN THE COURT OF THE DISTRICT MUNSIFF OF SOUTH KANARA.
O.S.No.13 1954.

Between:-

Saul Panduranga Ahalankar, by Special Power of Attorney holder, Sri N.Datta Nayak. ... Plaintiff.

AND

R.G. Maridas, Port Officer Mangalore. ... Defendant.

Plaint under Section 26 Order VII Rules 1 & 2 C. P.C.

The Plaintiff abovenamed begs to state as follows:-

1. That the plaintiff is the son of Panduranga Ahalankar of Goa, aged about 45 years, sues by its Power of Attorney holder Sri N. Datta Nayak, son of Rangappa Nayak, Merchant, Bunder, Mangalore. That is the address of the plaintiff for service of all notices and processes as well.

2. That the defendant is the son of (father's name not known), Hindu, Port Officer, aged about 32 years, Mangalore Port, Bunder, Mangalore. That is the address of the defendant for service of all notices and processes as well.

3. (a) That the plaintiff is the tindel of the vessel "Betal Prasad" Goa registration, plying from port to port on the West Coast of India, carrying tiles and other merchandise on hire. That in about the 15th November, 1953, as usual, the plaintiff came to Mangalore with his vessel Betalprasad and the same was loaded with tiles to a capacity of 30,000 which is the usual capacity of the said vessel. The loading was completed on 17-11-1953 and immediately thereafter the plaintiff applied to th defendant for the grant of necessary port clearance for the said vessel to sail from Mangalore port to Marma Goa Port. The application for the port clearance was filed on 18-11-1953 at 10 A.M. in the office of the defendant, at Bunder, Mangalore.

(b) That the defendant instead of complying with the just request of the plaintiff, illegally detained the said vessel for two days and at 5-20 P.M. on 19-11-1953, issued an order stating that the vessel was carrying excess cargo and therefore considered un-seaworthy. The said order passed by the defendant

illegal and ultravires of his powers. The said order was actuated by malice and was not issued bona fide. On account of non-grant of the Port Clearance, the vessel had to be detained in Mangalore Port for 6 days and the plaintiff had sustained damages at the rate of Rs.50/- per day on account of the maintenance of the crew of the vessel and other charges.

(c) The plaintiff sent a wire to the secretary, Public Works Department, Government of Madras, complaining about the illegal action of the defendant and subsequently sent an application requesting for the necessary action, directing the defendant to give port clearance.

(d) The defendant after delaying the vessel for 6 days refused to grant port clearance unless the tiles to the extent of 3000 tiles are unloaded from the said vessel. With a view to minimise the loss, the plaintiff under protest, unloaded 3000 tiles from the said vessel and left the Mangalore Port after getting the port clearance for the remaining cargo.

(e) On account of the said action of the defendant, the plaintiff lost freight on 3000 tiles at the rate of Rs.27/- per thousand and also had to incur the unloading charges for the 3000 tiles that were unloaded from the vessel. The cost of maintenace and other charges of the Kalasis and the crew of the vessel was Rs.50/- per day. At this rate, the plaintiff had to incur a charge of Rs.300/- for 6 days. The plaintiff submits that all these damages and loss was caused on account of the illegal action of detention by the defendant, and the plaintiff is entitled to be reimbursed the said loss by the defendant both under law as well as equity.

(f) The plaintiff, by a registered notice dated 20-11-1953 requested the defendant to grant port clearance, bringing to his notice all these facts and also the loss that might be incurred by the plaintiff by the said act. The defendant received the said notice but failed to grant the necessary port clearance without the plaintiff unloading the cargo to be extent of 3000 tiles. The plaintiff is therefore constrained to file this suit, claiming damages against the defendant. Hence this suit.

4. The cause of action for this suit arose on 18-11-1953 and subsequently in Mangalore Town, within the jurisdiction of this Court.

5. The plaintiff values the relief claimed in this suit at Rs.392/- for purposes of court fee and jurisdiction and a court fee of Rs.44-15-0 is paid thereon under Section VII Clause 1 Schedule 1 Article 1 of the Court Fees Act.

6. The Plaintiff, therefore prays for the decree and judgment, directing the defendant;

1) To pay the damages and loss sustained by the plaintiff as shown in the Schedule herebelow	..	Rs.390-0-0
2) Costs of notice	..	2-0-0
	Total	Rs.392-0-0

3) Costs of suit with interest and interest on the aggregate from this date till date of realisation.

For such other and further reliefs as this court deems fit to grant under the circumstances of the case.

Mangalore,)
10-12-1953)

Sd. M.V. Kamath,
Advocate for Plaintiff

Plaintiff.

I, the plaintiff abovenamed do hereby declare that the facts stated above are true to the best of my knowledge.

Mangalore,
10-12-1953. Plaintiff.

S c h e d u l e - A.

1. For 6 days at Rs.50/- per day ..	Rs.	300	0	0
2. Boat hire for unloading 3000 tiles at Rs.2-8-0 per thousand tiles ..		7	8	0
3. Stacking charges ..		1	8	0
4. Freight on 3000 tiles at Rs.27/- per thousand		81	0	0
Total		390	0	0

Mangalore, (Sd.) M.V.Kamath,
10-12-1953. Advocate for Plaintiff. Plaintiff.

I, the plaintiff abovenamed do hereby declare that the facts stated above are tmue to the best of my knowledge.

Mangalore, 10-12-1952. Plaintiff.

List of Documents filed under Order VII Rule 14 of C.P.C.

1. 20-11-53 - Copy of lawyer's notice sent to defendant
2. Order of the Port Officer.

Sd. M.V. Kamath,
Mangalore, 21-1-54. Advocate for plaintiff.

IV

IN THE COURT OF THE DISTRICT MUNSIFF OF SOUTH KANARA
O.S.Suit No.14 of 1954.

Raghunath Bhivia Bandkar by Special Power of attorney holder J.S.Pais - Plaintiff.

Sri M.V. Kamath, - Vakil/Advocate

R.G. Naridas - Defendant.

To

Defendant R.G. Naridas Esq., Port Officer, Mangalore.

WHEREAS the Plaintiff has instituted a suit against you for the reliefs claimed in the plaint, copy of which is enclosed herein, you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and above to answer all material questions relating to the suit, or who shall be accompnied by some person able to answer all such questions, on the 1st day of March 1954, at 11 o' clock in the forenoon, to answer the claim, and as the day fixed for your appearance is appointed for the final disposal of the suit, settlement of issued you are you must be prepared to produce directed on that day all the witnesses documents upon upon whose evidence which you intendt to reply in support of your defence.

Take notice that, in default of your appearance on the day before-

Notice:- (1) Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and/or depositing the necessary expenses.

(2) If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

mentioned, the suit will be heard and determined in your absence,

(Also take notice that in default of your filing an address for service before the day mentioned you are liable to have your defence struck out.)

Given under my hand and the seal of the Court, this 19th day of Jan. 1954.

(By Order)

Sd. M.V. Kamath,
Vakil Advocate for plaintiff.

Sd.
Central Nazir.

IN THE COURT OF THE DISTRICT MUNSIFF OF SOUTH KANARA

O.S.No.14 / 1954.

Between:

Raghunath Bhivia Bandkar, by special Power of Attorney holder, J.S.Pais) Plaintiff.

AND

R.G. Haridas, Port Officer, Mangalore - Defendant.

Plaint under Section 26 Order VII Rules 1 and 2 C.P.C.

The Plaintiff abovenamed begs to state as follows:

1. That the plaintiff is the son of Bhivia Bandkar, Hindu, aged above 28 years, sues by its Power of Attorney holder J.S. Pais, son of J.M. Pais, Roman Catholic Christian, Tile Merchant, Bunder, Mangalore. That is the address of the plaintiff for servies of all notices and processes as well.

2. That the defendant is the son of (father's name not known) Hindu, Port Officer, aged about 32 years, Mangalore Port, Bunder, Mangalore. That is the address of the defendant for service of all notices and processes as well.

3. (a) That the plaintiff is the tindel of the vessel Hemavanthy, Malban Registration, plying from port to port on the West Coast of India, carrying tiles andother merchandise on hire. That in about the 15th November, 1953 as usual, the plaintiff came to Mangalore with his vessel Hemavanthy and the same was louded with tiles to a capacity of 27,000, which is the usual capacity of the said vessel. The loading was completed on 17-11-1953 and immediately thereafter the plaintiff applied to the defendant for the grant of necessary port clearance for the said vessel to sail from Mangalore Port to Marma Goa Port. The application for port clearance was filed on 18-11-1953 at 10 a.m. in the office of the defendant, at Bunder, Mangalore.

(b) That the defendant instead of complying with the just request of the plaintiff, illegally detained the said vessel for two days and at 5-20 P.M. on 19-11-1953 issued an order stating that the vessel was carrying excess cargo and therefore considered unseaworhty. The saiderder passed by the defendant is illegal and ultravires of his powers. The said order was actuated by malice and was not issued bona fide. On accountof nongrantof the port clearance, the vessel had to be detained in Mangalore Port for 6 days and the plaintiff had sustained damages at the rate of Rs.50/- per day on account of the maintenance of the crew of the vessel and other charges.

(c) The plaintiff sent a wire to the Secretary, Public Works Department, Government of Madras, complaining about the illegal action of the defendant and subsequently sent an application, requesting for the necessary action directing the defendant to give port clearance.

(d) The defendant after delaying the vessel for 6 days refused to grant port clearance unless the tiles to the extent of 4000 tiles are unloaded from the said vessel. With a view to minimise the loss, the plaintiff under protest, unloaded 4000 tiles from the said vessel and left the mangalore port after getting the port clearance for the remaining cargo.

(e) On account of the said action of the defendant, the plaintiff lost freight on 4000 tiles at the rate of Rs.19/- per thousand and also had to incur the unloading charges for the 4000 tiles ~~x~~ that were unloaded from the vessel. The cost of maintenance and other charges of the Kalasis and the crew of the vessel was Rs.50/- per day. At this rate, the plaintiff had to incur a charge of Rs.300/- for 6 days. The plaintiff submits that all these damages and loss was caused on account of the illegal action of detention by the defendant, and the plaintiff is entitled to be reimbursed the said loss by the defendant both under law as well as equity.

(f) The plaintiff, by a registered notice dated 20-11-1953 requested the defendant to grant port clearance bringing to his notice all these facts and also the loss that might be incurred by the plaintiff by the said act. The defendant received the said notice but failed to grant the necessary port clearance without the plaintiff unloading the cargo to the extent of 4000 tiles. The plaintiff is therefore constrained to file this suit claiming damages against the defendant. Hence this suit.

4. The cause of action for this suit arose on 18-11-1953 and subsequently in Mangalore Town where the vessel Hemavanthy was detained by the defendant within the jurisdiction of this court.

5. The plaintiff values the relief claimed in this suit at Rs.390/- for purposes of court fee and jurisdiction and a court fee of Rs.43-13-0 is paid thereon under Section VII Clause 1, Schedule 1 Article 1 of the Court Fees Act.

6. The plaintiff, therefore prays for the decree and judgment directing the defendant to pay;

1. The damages and loss sustained by the plaintiff as shown in the Schedule herebelow		Rs.388-0-0
2. Costs of Notice	...	2-0-0
	Total	390-0-0

3. Costs of suit with interest and interest on the aggregate from thás date till date of realisation.

For such other and further relief as this court deems fit to grant under the circumstances of the case.

Mangalore, 10-12-1953. (Sd.) M.V.Kamath, Advocate for Plaintiff. Plaintiff.

I, the Plaintiff above named do hereby declare that the facts stated above are ture to the best of my knowledge.

Mangalore,) 10-12-1953.) Plaintiff.

Schedule.

1. For 6 days at Rs.50/- per day	Rs.300	0	
2. Boat hire for unloading 4000 tiles at Rs.2-8-0 per thousand tiles	10	0	0
3. Stacking charges	2	0	0
4. Freight on 4000 tiles at Rs.19/- per thousand	76	0	0
Total	388	0	0

Mangalore.) 10-12-1953) (Sd.) M.V. Kamath, Advocate for Plaintiff. Plaintiff.

I, the plaintiff abovenamed do hereby declare that the facts stated above are true to the best of my knowledge.

Mangalore,) 10-12-1953) (Sd.) M.V. Kamath, Advocate for Plaintiff. Plaintiff.

List of Documents filed under order VII Rule 14 of C.P.C.

1. 20-11-53 copy of lawyer's notice sent to Deft.
2. 19-11-53 Copy of order of Port Officer.

(Sd.) M.V. Kamath, Advocate for Pltt.

Mangalore, 10-12-53.

VI

17

Telegram

From Sri Dalal Pais, Mangalore,
To the State Port Officer, Madras,
Dated, 19-11-53.

Mangalore Port Officer detaining vessels Hemavanty Malvan registration and Belprasad Goa Registry tile cargo stop Both vessels loaded usual capacity running last six years stop Port Officer ordering unloading partial cargo stop Both vessels not violati rules stop Pray interfere instruct him granted clearance.

Endt.No.4059 G1/53-1. dt 21-11-53.

Copy forwarded to the Port Officer, Mangalore for information, necessary action and report.

2. It is presumed action has been taken according to confidential Circular No.3-SV(S)/52 of the Officer-on-Special Duty (Sailing vessels), Bombay dated 23-9-1953, copy endorsed to all officers by the Principal Officer, Mercantile Marine Department, Madras, Please confirm.

VII

From J.S. Pais, Tile Merchant, Commission Agent and Vessel Broker, Hoige Bazaar, Mangalore,
To the Secretary to Government, Public Works Department, Madras,
D. 21-11-53.

On 19-11-1953 I sent a telegram complaining about the illegal detention of the Vessel Betal Prasad and Hemavanthy by the Port Officer, Mangalore Port Office, under the pretext of overlouding. A copy of the said wire is reproduced for your kind reference:

MANGALORE PORT OFFICER DETAINING VESSELS HEMAVANTHY MALVAN REGISTRATION AND BETALPRASAD GOA REGISTRY TILE CARGO STOP BOTH VESSELS LOADED USUAL CAPACITY RUNNING LAST SIX YEARS STOP PORT OFFICER ORDERING UNLOADING PARTIAL CARGO STOP BOTH VESSELS NOT VIOLATING RULES STOP PRAY INTERFERE INSTRUCT HIM GRANT CLEARANCE
DALAL PAIS.

A similar episode occurred in the year 1946 under a similar regulation introduced by the then Port Officer of fixing the 'Load Line'. Under the guise of the said regulation the vessel owners and tindals and the Tile merchants were harassed and put to great hardship by the then Wharf Supervisor, who was entrusted with the work of fixing this 'load line' and also the then Port Officer. By a confidential report dated 18-6-1946 sent by the Kanara Vessel Broker Association, Hoige Bazar, Mangalore to Sri V.N. Kudva, I.C.S., Secretary to Government, Public Works Department, Madras, the unauthorised and arbitrary and whimsical acts of this Wharf Supervisor had been brought to the notice of the authorities and on enquiry the Wharf Supervisor had been transferred from Mangalore Port to Malabar. Since then there was no question of load line and the vessels were allowed to load according to their capacity:

Thebelow vessels loaded last year:

Betal Prasad	30000	tiles on 8-11-52
do	31000	tiles on 20-11-52
do	30000	tiles on 1-4-53
Hemavanthy	27000	tiles on 25-11-52
do	27000	tiles on 24-1-53
do	27000	tiles on 6-3-53.

As usual petitioner applied for Port clearance in respect of the said two vessels viz.

1. Petal Prasad Registration No.81 of Goa

2. G. Hemavanthi Registration of 891 of Malvan on 18-11-1953 at 10 A.M., On the pretext of this 'load line' regulation the Port clearance was refused verbally and when demanded in writing a notice was issued on 19-11-53 at 5.20 P.M., refusing Port clearance on the alleged ground that there is excess cargo. Owing to this unauthorised and illegal detention of vessels in question by the Port Officer and his subordinates, the entire trade has been at a standstill and the same would work out a great hardship to all the parties concerned including the tile manufacturers, Tile Brokers and vessel owners in case this devise of 'Load Line' is allowed to continue. It may be noted that about 80 % of the vessels arriving to Mangalore are of Konkan and Goa Registration.

The petitioner therefore prays that an immediate enquiry may be instituted into this matter and necessary orders may be issued to the Port Officer, Mangalore, not to detain the vessels unnecessarily and harass the parties.

For which act of Kindness, the petitioner will ever remain grateful.

Prays for orders accordingly.

---

x x

Copy to the State Port Officer, Madras.

Endt.No.4078 G1/53-1.

Copy forwarded to the Principal Officer, Mercantile Marine Department, for favour of remarks please with reference to Confidential Circular No.3-S.V.(8)/52, dated 23-9-53 of the Officer-on-Special Duty (Sailing Vessels), Bombay.

I have contacted the Port Officer, Mangalore over the telephone on this question on the 21st instant and understand that the vessels were definitely overloaded. The Port Officer has also informed me that he has referred to you on the subject.

L.M. Cornish,
Madras, 23-11-53. State Port Officer.

VIII

From the Principal Officer, Mercantile Marine Department, Madras
To the State Port Officer, Madras,
No.SVY/1685, dated 24-11-1953.

With reference to your endorsement No.4078/G1/53-1, dated 23-11-1953, this case was referred to me - vide copy of the telegram enclosed. This office reply is also enclosed for your information.

X

Telegram.

X RM MANGALORE C 12 53 RPPD EXPRESS PRINCIPOFF MADRAS - REFERENCE CIRCULAR 3 STOP MACHWA YESHWANTY YESHWATI SAKRI SALAMATY PATHEMAR LAXMI OF REGISTERED TONS 27.70/100 32.07/100 2864/100 29.26/100 CARRYING AS USUAL 44 56 58 AND 52 TONS CARGO RESPECTIVELY WITH SOMEWHAT LESSER FREE BOARD THAN PRESCRIBED STOP OTHER REGULATIONS IN ORDER REQUEST INSTRUCTIONS WHETHER CLEARANCE MAYBE GRANTED - PORT OFFICER.

REPLY TELEGRAM (PHONOGRAM)

YOUR TELEGRAM 12TH APPLY STRICTLY CIRCULAR THREE.

PRINCIPOFF,
12-11-1953.

X

Telegram

X SL BOMBAY 24 STE 122 - PRINCIPOFF MADRAS
NO 3-SV(8)/52, REFERENCE 3537/53-2, DATED 21st INSTANT FROM PORT OFFICER MANGALORE STOP GALBAT HEMAGVANTHY MAY BE ALLOWED PROCEEDHER VOYAGE AFTER PORT OFFICER HAS WARNED TINDAL IN WRITING THAT IN THIS OPINION THE VESSEL IS OVERLOADED AND TINDAL SHALL BE HELD RESPONSIBLE FOR CONSEQUENCE IF SHE IS NOT LIGHTENED STOP PORT OFFICER SHOULD SEND COPY OF WARNING TO YOU AND TO US AND KEEP COPY ON HIS RECORD STOP REGARDING SECOND VESSEL MACHWA BETALPRASAD SAME SHOULD BE DETAINED IF LIFESAVING APPLIANCES NOT ON BOARD AS PRESCRIBED UNDER SECTION 216 B(3) IMS ACT BUT MUST BE ALLOWED PROCEED HER VOYAGE AFTER PRESCRIBED LIFESAVING APPLIANCES ON BOARD STOP ADDRESSED PRINCIPOFF MADRAS REPEATED PORT OFFICER MANGALORE TO SAVE TIME.

DEGESHIP.

II.

No.SVY/1693.

Mercantile Marine Department,
Post Box No.268,Madras-1,
Dated 25th November 1953.

Copy to the State Port Officer, Madras, for information with reference to his endorsement No.4078 G1/53-1, dated 23-11-1953.

T. Berry,
Principal Officer.

XI

COPY

TELEGRAM

O OH MANGALORE C 25 28 PRINCIPOFF MADRAS - HEMAVANTHY AND BETALPRASAD ALREADY GRANTED CLEARANCE AFTER DISCHARGING PART CARGO AND COMPLYING WITH FREEBOARD RULES REQUIRED AS PER CIRCULAR THREE REPEATED DEGESHIP BOMBAY - PORT OFFICER.

No.SVY/1713.

Mercantile Marine Department,
Post Box No.268, Madras-1,
Dated, 26th November 1953.

Copy forwarded to the State Port Officer, Madras in continuation of thisoffice endorsement No.SVY/1693, dated 25-11-1953.

T.Berry,
Principal Officer.

XII

23

From the Port Officer, Mangalore,
To the State Port Officer, Madras,
No.3537/53-3, dated 23-11-1953.

Mangalore Port - Detention of sailing vessels endangering the safety of crew, vessel and cargo.
Ref:- State Port Officer's Endt.No.4059 G1/53-1, dated -11-53.

I confirm that action has been taken according to Confidential Circular No.3 - SV(S)/52 of the Officer-on-Special Duty, Sailing vessels, Bombay dated 23-9-1953, copy endorsed to all officers by the Principal Officer, Mercantile Marine Department, Madras.

In this connection copy of this office letter No.3537/53 dated 21-11-1953 to the Principal Officer, Mercantile Marine Department, Madras with copies of correspondence referred to therein are enclosed for favour of perusal.

XIII

Letter No.3537/53- dated 21-11-1953 from the Port Officer, Mangalore to the Principal Officer, Maercantile Marine Department, Madras.

Mangalore Port - Detention of sailing vessels (country craft) due to overloading - want of freeboard clearance-
Ref:- Circular No.3-SVY (S)/52, dated 23-9-1953 from the Director-General of shipping - Your endt.No.SVY/288-1, dated 9-10-1953.

As indicated in Part II of the above Circular regarding overloading of sailing vessels and on scrutiny of the vessels real condition after completion of loading, I have withheld in writing the port clearance of Galbat Hemavanthy and Machwa Betalprasad for reasons of overloading consequently showing a lesser freeboard thereby endangering the safety of the crew, vessel and cargo.

Galbat Hemavanthy of Registered Tons 28,85 loaded with 52½ tons Tile cargo, leaves a free board of 10" only against the requisite freeboard of 19", the length of the vessel being 34'0. Machwa Betalprasad of Registered tons 48.94 loaded with 61½ tons Tile cargo permits a free board of 19" though she is to possess a freeboard clearance of 26" the vessel's length on measurement being found 48'00". Machwa Betelprasad does not also possess regulation lights, side screens and Lifesaving appliances except a canoe sufficient to accommodate the crew of 8.

I have therefore informed the Tindals in wiriting- Vide copy of letters enclosed of the above sailing vessels to discharge part cargo so as to permit a safe and minimum free board. Instead of complying with the instructions issued with due regard to safety of life and property in the high seas, both the tindals perhaps at the instigation of their unlicensed brokers, have taken recourse to serve on the Lawyer's notice, copies of which are enclosed for perusal. As alleged by the Lowyer, the vessels did not load completely on 17-11-1953 but were actually loaded on 18-11-1953 as endorsed by the Customs Staff on the Duplicate copy of shipping Bill Nos.5377/53 soon after which their free boards were checked and having been found that these two vessels possessed unsafe freeboard, clearance, the Tindals were immediately todd to lighten them to attain the requisite freeboard of 19" and 26" respectively. They however refused to acknowledge my immediate verbal instructions on 18-11-53 and evaded app/earance. On 19-11-1953 afternoon their Brokers (unlicensed) approached me and demanded clearance for the vessels but were told that port clearance would be granted provided the vessels show the minimum free board. Immediately written notices were served on the Tindals to comply with the safety regulations.

The vessels have not so far been lightened to permit safe freeboard clearance and as such in their present condition are considered unsafe to proceed to sea. In view of the Lawyer's notice dated 20-11-53, which has not been replied to, and the refusal on the part of the Tindals to lighten the vessels, I request early instructions whether the vessels may be further detained under provisions of Section 232 of the Indian Merchant Shipping Act, Instructions requested for in this office letter No.2888/53-2, dated 26-10-1953, may also please be expedited.

Copy with copy of the Lawyer's notices and copy of this office letter No.2888/53-2, dated 26-10-1953 referred to above forwarded to the officer-on-Special Duty, (Sailing vessels) Office of the Director General of Shipping, Commerce House, Ballard Estate, Bombay for favour of information.

XIV

Copy of letter from the Port Officer, Mangalore to the Tondal, Saulo, Sailing Vessel M. Betalprasad, Tons 48.94, dated 19-11-1953.

As your vessel M. Betalprasad No.81 of Goa has been found to carry excess cargo and is therefore considered unseaworthy. You will not be granted clearance till you discharge part cargo so as to leave a clean free board of 26" inches from the permanent structure.

XV

Copy of letter dated 19-11-1953 from the Port Officer, Mangalore to the tindal Raghunath, Sailing Vessel G. Hemavanthi, Tons 28.85.

As your vessel G. Hemavanthi No.8717 of Malvan has been found to carry excess cargo and is therefore considered unseaworthy, you will not be granted clearance till you discharge part cargo so as to leave a clean free board of 19" from the permanent structure.

XVI

Copy of Registered Notice from Sri M. Venkatraya Kamath, B.A.B.L., Advocate, Mangalore to the Port Officer, Mangalore, dated 20-11-1953.

Sri Saula Panduranga, Tondal of the vessel, Betal Prasad Vessel of No.81 of Goa, now at Mangalore Port, has consulted me regarding the illegal detention of the said vessel.

I am instructed to say that the said vessel Betal Prasad has been carrying Tiles from Mangalore Port for the past Eight years and the carrying capacity of the said vessel is 30,000 tiles which fact could be easily discovered from the records maintained in the Port Office, at Mangalore.

I am to say that for the past Eight-years the said vessel was being loaded with tiles to a capacity of 30,000 tiles for Trips from Mangalore Port to Marmagoa, Bombay Ports. The said vessel performed every trip with capacity of cargo without any mishap in its voyage.

As usual my client loaded the said vessel with tiles to its usual capacity and the loading was completed on 17-11-1953. Immediately thereafter my client requested you to grant the necessary Port Clearance for the vessel on 18-11-1953 at 10 A.M.

Instead of complying with the just request of my client, you have after detaining the vessel illegally for two days, at 5.20 P.M. on 19-11-1953 issued an order stating that the vessel of my client is found to carry excess cargo and is therefore considered unseaworthy. And that my client will not be granted Port clearance till he discharged part of the cargo. I am to say that the said action of your is illegal and ultravires. It savours of malice and was not issued bonafide. My client is unable to gather from the notice issued to my client under particular provision of the Statute, you have issued this order directing my client to discharge part of the cargo.

My client on account of the with holding of the Port Clearance has been put to great loss and hardship. He is not able to fulfil the terms of the contract and deliver the cargo in time at the Port of destination.

Further on account of the illegal detention he is put to loss at the rate of Rs.50/- per day for the food and other charges of the crew of the vessel and also loss of freight due to illegal detention. The same is occasioned on account of your illegal act, you are liable to make good the said loss to my client.

This is to call upon you to grant the Port clearance to my client within 24 hours of this notice, failing which my client will be constrained to institute necessary legal proceedings against you at your risks as to costs and for damages which please note.

XVII

Copy of Registered Notice dated 19-11-1953 from Sri M.Venkatraya Kamath, B.A.B.L., Advocate, Kampankatta, Mangalore to the Port Officer, Mangalore.

Sri Raghunath, Tindal of the vessel, Hemavanthy Malyan Registration, now at Mangalore Port, has consulted me regarding the illegal detention of the said vessel.

I am instructed to say that the said vessel Hemavanthy has been carrying tiles from Mangalore Port for the past six years and the carrying capacity of the said vessel is 27,000 tiles which fact could easily discovered from the records maintained in the Port Office, at Mangalore.

I am to say that for the past six years the said vessel was being loaded with tiles to a capacity of 27,000 tiles for trips from Mangalore port to Marmagoa, Bombay Ports. The said vessel performed every trip with full capacity of cargo without any mishap in its voyages.

As usual my client loaded the said vessel with tiles to its usual capacity and the loading was completed on 17-11-53 immediately thereafter my client requested you to grant the necessary Port clearance for the Vessel on 18-11-1953 at 10 A.M. Instead of complying with the just request of my client, you have after detaining the vessel illegally for two days at 5.20 P.M. on 19-11-53 issued an order stating that the vessel of my client is found to carry excess cargo and is therefore considered unseaworthy. And that my client will not be granted clearance till he discharged part of the Cargo. I am to say that the said action of yours is illegal and ultravires. It savours of malice and was not issued bonafide. My client is unable to gather from the notice issued to my client under what particular provision of the statute you have issued this order directing my client to discharge part of the cargo.

My client on account ~~on account~~ of the withholding of the Port Clearance has been put to great loss and hardship. He is not able to fulfil the terms of the contract and deliver the cargo in time at the Port of destination.

Further on accountof the illegal detention he is put to loss at the rate of Rs.50/- per day for the food and other charges of the crew of the vessel and also loss of freight due to illegal detention. The same is occasioned on account of your illegal act, you are liable to make good the said loss to my client.

This is to call upon you to grant the Port clearance to my client within 24 hours of this ~~office~~, failing which my client will be constrained to institute necessary legal proceedings against you at your risks as to costs and for damages which please note.

XVIII

Copy of letter No.2888/53-2, dated 26th October 1953 from the Port Officer, Mangalore to the Principal Officer, Mercantile Marine Department, Madras.

Detention of sailing vessels (Country craft) when suspected of overloading - Bathalas and Fathemars having temporary Bulwark - Further instructions requested.
Ref:- Circular No.3 - SVY (8)/52, dated 23-9-1953 from the Director General of Shipping - Your Endt.No.SVY-288-1, dated 9-10-1953.

On scrutinising the loaded condition of certain types of sailing vessels like the "Bathelas" from Gujarat it is observed that by the nature and model of their construction, they are in variably fitted with temporary but water-tight bulwarks of timber planks covered with bamboo matting raised to a height of about 3 feet from the main permanent deck. These "Bathelas" due to their pecular type of construction with flat bottom and requiring low draft, carry 30 to 100 percent of excess cargo over the registered tonnage consequent ly allowing a lesser free board than what is prescribed in the tentative formula, excluding the 3 feet clearance of temporary structure, which superstructure, according to the above circular is t be utterly ignored for purposes of free board. The same difficulties are presented by the "Fathemars" from Portuguse territories, Konkan and North Kanara. But however, there are records in this office to show that these vessels carried the same quantity of cargo or even more during their previous voyages since several years, the carrying capacity of these vessels being much higher than their net registered tonnage.

In the absence of statutory enactment Governing the standards of overloading and uniformity in the registered tonnage measurement throughout the Indian coast, for want of rules prescribing the type and build of sailing vessels with suitable restrictions against temporary superstructures and in view of the fact that hardship and inconvenience would be caused to "Bathela" and "Fathemar" traffic if the tentative formula specified in Part II of the Circular cited above are to be applied invariably, I request further instructions regarding the desirability of detaining such craft.

In para 9(a) of the Circular it is instructed that the Detaining Officer should <u>not hesitate to refrain</u> from granting port clearance without assigning any reason to the tindal or agent in writing but immediately report what he has observed to the Principal Officer, of his district, but whereas it is laid down in Section 232 (1)(b) of the Indian Merchant Shipping Act that a written statementof the grounds of such detention shall be <u>forthwith served</u> on the Master of such ship and as per executive instructions issued in Part II of the Instructions to Principal Officers, Surveyors etc. a report has to be sent in form "Surveys 84(b) India showing the grounds of provisional detention. Thus the instructions now issued under circular cited above appear to be in supersessionof the existing one. As Government fully appreciates the considerable responsibility of a detaining officer as official detention will be a serious matter which may involve considerable expense and the Government of India might under Section 233 have to pay to the owner the cost of the detention and survey etc. I request clearer instructions in the mat so as not to conflict with Section 232 (1)(b) of the Indian Merchant Ships Act.

(True copy)

State Port Officer.

-2-

31

No.SVY/2099.

Mercantile Marine Deptt.,
Madras 1, dated 8th Feb. 54.

Copy forwarded to the State Port Officer, Madras for information.

sd T. Berry,
Principal Officer.

No.4267 G1/53-3.

Copy submitted to the Secretary to Government, Public Works Department, Madras in continuation of this office letter to Government No.4267 G1/53-2, dated 2-2-1954.

plans

Madras, 8-2-53.

State Port Officer.

P.8.

PWD (Fi)

Pages 1- 31 alone and p 39 enclosed.

may be necessary perusal.

16-2-54

PWD 15/2/54

15.2.54

X

Copy of letter No.8-SV(2v)/53, dated 6th February 1954 from the Director General of Shipping, Bombay to the Port Officer, Mangalore and copy endorsed to the Principal Officer, Mercantile Marine Department, Madras.

Sub:- Detention of sailing vessels "Hemavati" and "Betalprasad".

1087/1052

With reference to your letter "Very Emergent" No.3557/53-20 date the 2nd February, 1954, on the above subject, please note that the deficiency of equipment of the craft "Betalprasad" was reported in your letter No.3537/53-1 of 21-11-1953. The reference to a letter dated 9-10-53 in para 4 of the briefing points sent to you along with out letter of the 30th January was erroneous.

2. Please refer to the Ministry of Commerce Publication entitle "Instructions Relating to the General Supervision of Ships and to the Supervision of Ships which have sustained casualities to Hull, Machinery or Equipments 1948" wherein in para 16 on page 8, you shall find the necessary reference. This paragraph 16 occurs in Part II of the above Publication entitled "Instruction to officers having powers of detention under the Indian Merchant Shipping Act, 1923" and is reproduced below for information:-

"16. Defective Hull, Equipments or Machinery:

This covers every possible defect in the ship itself apart from cargo, stores, water, bunkers and ballast.

Life-Saving appliances are obviously an important item of equipment. Hatch covers, and the means of battening down, as well as steering gear are also most important, especially in small vessels".

Your attention is also drawn to para 8 on page 2 of Part I of the same Publication which is reproduced below:-

"8 Country Craft:

While it is realised that country craft cannot be kept under supervision to the same extent as steamships, these vessels should be occasionally inspected as opportunity offers. Large country craft proceeding with passengers on long sea voyages (e.g. to East Africa) from a port in India should be inspected before leaving. Attention is drawn to M.M.D. Circular No.10 of 1945".

3. You will see therefrom that the position you have taken with regard to this craft is completely justified under the instructions issued to every detaining officer by the Govt. of India and the rece circular on the subject being Circular No.3-SV(8)/52 of the 23rd Sep. 1953 was only an application of the previous instructions issued. This may be brought to the notice of the Public Prosecutor, for preparation of your affidavit.

4. As the suit is filed only against the Port Officer, Mangalor the defence that the Port Officer, Mangalore was carrying out his duties strictly within the instructions issued by the Govt. of India should be sufficient and complete. As the Govt. of India is not mad a co-defendant in this case, the question for justification for issuing such instructions should not arise.

16481

From:
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

To:
The Secretary to Government,
Public Works Department,
Madras.

DIL-ASST. SECRETARY TO GOVT.
27 FEB 1954
PUBLIC WORKS

No. 4267 G1/53-4 Dated 25th February 1954

Sir,

Detention of sailing vessels 'Hemawanty' and 'Betalprasad' at the port of Mangalore - Correspondence resting with my endorsement to Government No.4267 G1/53-3 dated 8-2-54.

p 31 ante

In continuation of my letter cited, I forward herewith for the information of Government a copy of letter No.3537/53-24 dated 20-2 from the Port Officer, Mangalore to the Director General of Shipping Bombay together with a copy of each of the two draft written statements prepared by the Government Pleader, South Kanara, Mangalore to be filed in the Court of the District Munsiff, Mangalore.

× p37 infra

△ pp39-45 infra

Yours faithfully,

State Port Officer.

Encl:
Copy of Mangalore Port Officer's letter dated 20-2-54.
Two copies of draft statements (in original).

AT/25.

37

From the Port Officer, Mangalore.
To the Director General of Shipping, Ballard Estate, Bombay
No.3553/53-24 dated 20-2-54.

Mangalore Port - Detention of sailing vessels 'Hemawanty' and 'Betalprasad' - Preparation of affidavit - Draft for approval and return - Correspondence resting with Director General of Shipping's letter No.8-SV(29)53 dated 6-2-54.

+ pp 31-45 supra

--

Two copies of the draft written statements prepared by the Government Pleader, South Kanara, Mangalore to be filed before the District Munsiff, Mangalore are submitted herewith for favour of scrutiny and approval. As it may not be possible to file the statement in the court on the stipulated dates, the Government Pleader has already been requested to move the District Munsif to grant extension of time for a fortnight. It is therefore requested that the statements may please be returned with corrections if any as early as possible.

(True Copy)

State Port Officer

IN THE COURT OF THE DISTRICT MUNSIFF OF SOUTH KANARA.

O.S.No.13 of 1954.

Between:-

Saul Panduranga Ahalankar by Special Power of Attorney holder, Sri N.Datta Nayak. } Plaintiff

and

E.G.Hardas, Port Officer, Mangalore. } Defendant

WRITTEN STATEMENT FILED ON BEHALF OF THE DEFENDANT UNDER ORDER VIII RULE I OF THE CODE OF CIVIL PROCEDURE.

The Defendant abovenamed begs to state as follows:-

1. That the suit is false, frivolous and seems to have been filed out of malice by the Power of Attorney Holder of the Plaintiff and it is not maintainable in law.

2. This Defendant is not aware as to when this vessel came within the Mangalore Port limits except by an intimation sent by the Dept dated 14-11-53. He is also not aware as to when the loading was completed except from the report of the Customs authorities on the copy of the Shipping Bill. But he is aware of an application filed by the tindel of the vessel for the port clearance certificate, on 18-11-53 at 10 A.M. in his Office.

3.(a) This Defendant denies that he had illegally detained the said vessel for 2 days and that at 5-20 P.M. on 19-11-53, issued an order stating that the vessel was carrying excess cargo and therefore it was considered unseaworthy. In fact, it is one of the duties of the Defendant to see and examine if the vessel for which a Port Clearance Certificate is sought, is in a seaworthy condition or not. Hence, on receipt of the application for a port clearance certificate, he had to get certain particulars regarding the vessel verified and in the course of his official duties, he get the report that the said vessel was overloaded and that it was unseaworthy.

(b) This Defendant begs to submit that it is incorrect to state that the order issued by him was illegal or ultravires of his powers. In fact, he had ample powers and authority to issue such orders and also to detain the vessels which were

unseaworthy under the provisions of the Indian Merchant Shipping Act of 1923. It is incorrect to state that this defendant was actuated by malice and was lacking in bonafides when he had issued such an order. In fact, he had absolutely no such malice and his acts were perfectly bonafide, and he had done those acts were only in the due discharge of his duties as a Port Officer.

(c) This Defendant does not admit the fact that he was responsible for the detention. On the other hand, it was the act of the Plaintiff which was responsible for the course adopted by this defendant. He is not responsible for the detention of the said vessel within the Port of Mangalore for 6 days. In fact, if the party had complied with the provisions and the Rules made under the Indian Merchant Shipping Act, there was absolutely no need for this Defendant to detain the said vessel nor would he have issued any such order. On the other hand, if the vessel was found seaworthy, he would have issued the necessary certificate forthwith. Therefore, if at all the vessel had been detained in the Port of Mangalore for a period of 6 days, it was the result of the actions of the Plaintiff himself and the defendant is not at all responsible for any of the deliberate violations of the provisions of the Indian Merchant Shipping Act by the Plaintiff. It is also submitted that in any case the damages claimed at the rate of Rs.50/- per day are too excessive and are totally unwarranted.

(d) This Defendant begs to submit that he is not at all aware of the various actions taken by the Plaintfff, if any, nor do such actions concern him as he had done everything bona fide in the due discharge of his duties.

(e) This Defendant admits that he had ordered the Plaintiff to reduce the weight of the load by unloading 3000 tiles as this act alone would render the said essel seaworthy and he is not at all responsible for the time taken by the Plaintiff to comply with his orders. This defendant is not at all responsible or liable to pay any damages if at all caused to the Plaintiff in unloading 3000 tiles at the rate of Rs.27/- per thousand, nor is he responsible for other costs which were alleged to have been

incurred for the maintenance and other charges of the crew of the vessel as the enforcement of Rules were occasioned by the overloading done by the Plaintiff and by rendering the vessel unseaworthy. Hence, he is neither liable to pay Rs.300/- as damages nor is he liable for any other expenditure if at all incurred by the Plaintiff.

(f) This Defendant begs to submit that the action of the Plaintiff in issuing a registered notice dated 20-11-53 is not in accordance with law. Instead of that he ought to have reduced the weightage or lessened the load of the vessel and must have complied with the rules pertaining to this matter, and rendered the vessel seaworthy.

4. This defendant begs to submit that the notice given by the Plaintiff is not in accordance with Section 80 of the Civil Procedure Code and this suit which has been filed on the strength of such an illegal notice is liable to be dismissed.

5. That this suit is bad as it has been filed by the Power of Attorney Holder on behalf of the Plaintiff, without complying with the necessary requirements of law.

6. This Defendant further begs to submit that this suit is not maintainable under Section 295 of the Indian Merchant and Shipping Act, and is liable to be dismissed.

7. This Defendant denies all the allegations in the plaint which have not been specifically traversed herein.

8. This suit had been filed without any cause of action and is frivolous, vexatious and malicious, and hence, it is liable to be dismissed with compensatory costs under Section 35A of the Civil Procedure Code.

Mangalore,)
-2-1954.)

R.G.Kamdar

Government Pleader of S.K. Defendant.

I, the Defendant abovenamed do hereby declare that the facts stated above are true to the best of my knowledge.

Mangalore.)
-2-1954.)

R.G.Kamdar

Defendant.

43

IN THE COURT OF THE DISTRICT MUNSIF OF SOUTH KANARA.

O.S.No.14/1954.

STATE PORT OFFICE
24 FEB 1954
MADRAS

Between:-

Raghunath Bhivia Bandkar, by Special Power of Attorney holder, J.S.Pais.) Plaintiff

and

L.G.Hardas, Port Officer, Mangalore.) Defendant.

WRITTEN STATEMENT FILED ON BEHALF OF THE DEFENDANT UNDER ORDER VIII RULE I OF THE CODE OF CIVIL PROCEDURE.

The Defendant abovenamed begs to state as follows:-

1. That the suit is false, frivolous and seems to have been filed out of malice by the Power of Attorney Holder of the Plaintiff and it is not maintainable in law.

2. This Defendant is not aware as to when this vessel came within the Mangalore Port limits, except by an intimation sent by the Defendant dated 11-11-1953. He is also not aware as to when the loading was completed except from the report of the Customs authorities and the copy of the Shipping Bill. But he is aware of an application filed by the tindal of the vessel for Port Clearance Certificate on 18-11-1953 at 10 A.M. in his Office.

3.(a) This Defendant denies that he had illegally detained the said vessel for 2 days and that at 5-20 P.M. on 19-11-53, issued an order stating that the vessel was carrying excess cargo and therefore it was considered unseaworthy. In fact, it is one of the duties of the Defendant to see and examine if the vessel for which a Port Clearance Certificate is sought, is in a seaworthy condition or not. Hence, on receipt of the application for a Port Clearance Certificate, he had to get certain particulars regarding the vessel verified and in the course of his official duties, he got the report that the said vessel was overloaded and that it was unseaworthy.

(b) This Defendant begs to submit that it is incorrect to state that the order passed by him was illegal or ultravires of his powers. In fact, he had ample powers and authority to

issue such orders and also to detain the vessels which were unseaworthy under the provisions of the Indian Merchant Shipping Act of 1923. It is incorrect to state that this Defendant was actuated by malice and was lacking in bonafides when he had issued such an order. In fact, he had absolutely no such malice and his acts were perfectly bonafide, and he had done those acts only in the due discharge of his duties as a Port Officer.

(c) This Defendant does not admit the fact that he was responsible for the detention. On the other hand, it was the act of the Plaintiff which was responsible for the course adopted by this Defendant. He is not responsible for the detention of the said vessel within the Port of Mangalore for 6 days. In fact, if the party had complied with the provisions and the Rules made under the Indian Merchant and Shipping Act, there was absolutely no need for this Defendant to detain the said vessel nor would he have issued any such order. On the other hand, if the vessel was found seaworthy, he would have issued the necessary certificate forthwith. Therefore, if at all, the vessel had been detained in the Port of Mangalore for a period of 6 years, it was the result of the actions of the Plaintiff himself and the Defendant is not at all responsible for any of the deliberate violations of the provisions of the Indian Merchant Shipping Act, by the Plaintiff. It is also submitted that in any case the damages claimed at the rate of Rs.50/- per day are too excessive and are totally unwarranted.

(d) This Defendant begs to submit that he is not at all aware of the various actions taken by the Plaintiff if any, nor do such actions concern him as he had done everything bonafide in the due discharge of his duties.

(e) This Defendant admits that he had ordered the Plaintiff to reduce the weight of the load by unloading 4000 tiles as this act alone would render the said vessel seaworthy and he is not at all responsible for the time taken by the Plaintiff to comply with his orders. This defendant is not at all responsible or liable to pay any damages if at all

46

caused to the Plaintiff in unloading 4000 tiles at the rate of Rs.19/- per thousand, nor is he responsible for other costs which were alleged to have been incurred for the maintenance and other charges of the crew of the vessel as the enforcement of Rules were occasioned by the overloading done by the Plaintiff and by rendering the vessel unseaworthy. Hence, he is neither liable to pay Rs.300/- as damages nor is he liable for any other expenditure if at all incurred by the Plaintiff.

(f) This Defendant begs to submit that the action of the Plaintiff in issuing a registered notice dated 19-11-53 is not in accordance with law. Instead of that he ought to have reduced the weightage or lessened the load of the vessel and must have complied with the rules pertaining to this matter, and rendered the vessel seaworthy.

4. This Defendant begs to submit that the notice given by the Plaintiff is not in accordance with Section 80 of the Civil Procedure Code and this suit which has been filed on the strength of such an illegal notice is liable to be dismissed.

5. That this suit is bad as it has been filed by the Power of Attorney Holder on behalf of the Plaintiff without complying with the necessary requirements of law.

6. This Defendant further begs to submit that this suit is not maintainable under Section 295 of the Indian Merchant Shipping Act and is liable to be dismissed.

7. The Defendant denies all the allegations in the plaint which have not been specifically traversed here in.

8. This suit has been filed without any cause of action and is frivolous, vexatious and malicious, and hence, it is liable to be dismissed with compensatory costs under Section 35 A of the Civil Procedure Code.

Mangalore,
1954.

K.G.Bhandas

Government Pleader of S.K. Defendant.

I, the Defendant abovenamed do hereby declare that the facts stated above are true to the best of my knowledge.

Mangalore,
1954.

K.G.Bhandas
Defendant.

From
L.H. Cornish, Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

1027 4 F/5 Td

To
The Secretary to Government,
Public Works Department,
Madras.

No. 4267 GL/53-5, dated 27-2-1954.

DEPUTY SECRETARY TO GOVT. 1-MAR 1954

Sir,

Sub: Detention of sailing vessels "Hemavanty" and "Batelprasad" at the Port of Mangalore.

Ref: Correspondence resting with my letter to Government No. 4267 GL/53-4, dated 25-2-1954.

16887 p35ans

In continuation of my letter cited, I forward herewith for the information of Government a copy of letter No. 8-SV(29)/53, dated 25-2-54 from the Officer on Special Duty, Office of the Director General of Shipping, Commerce House, Ballard Estate, Bombay to the Port Officer, Mangalore suggesting certain amendments to the affidevits prepared by the Government Pleader, S.K. Mangalore and enclosed to my letter cited.

below

pp 37-45 ans

Yours faithfully,

STATE PORT OFFICER.

Encl:1.

From Officer-on-Special Duty, Office of the Director General of Shipping, Bombay-1.
To the Port Officer, Mangalore.
No.8-SV(29)/53, dated 25th February 1954.

Sub: Detention of sailing vessels "Hemavanty" and "Beterprasad".

---

p37 ans

With reference to your 'very emergent' letter No.3537/53-24, dated 20th February 1954, on the above subject, enclosing copies of two affidavits prepared by the Government pleader, Mangalore to be submitted to the District Munsiff's Court in the suits filed on behalf of Hemavanty and Betelprasad, we have to suggest that the last sentence in para 3, sub-para (c) in both the affidavits may be comitted. The sentence that may be omitted runs as under:

'S' on p40 and 'R' on p44 ans

"It is also submitted that in any case the damages claimed at the rate of Rs. 50/- per day are too excessive and are totally unwarranted".

2. Your attention is drawn to the words "years" which should be "days occurring in the same subpara (c) para 3 in the sentence which runs as under:

"Therefore, if at all, the vessel had been detained in the Port of Mangalore for a period of 6 years (which should, when corrected, read 6 days), it was the result of the action, etc., etc".

Pl see p44 ans

Copy forwarded for information to the State Port Officer, Madras.

(True Copy)

PWD (Fi)

STATE PORT OFFICER.

Pages 35-47 ans.

May be filed after perusal

4.3.54

31/3/54 4.3.54.

Remarks: Le 9 / P.W.D.(F.)

Memo. no. 10874 F/54-1 dated 14-5-54.
Port - Mangalore - Detention of sailing vessels "Hemavanty" and "Bakelprasad".

Correspondence respecting writ petitions.
4267 GL/53-5 of 27.2.54 from the SPO.

The S.P.O. is requested to state whether the case relating to the above matter has finally been disposed of by the Court of Law and if so to furnish a copy of the final order passed thereon.

for the S.P.O.
17/5/54

DW 13/05/54

M 14.5.54

From:
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13, Madras-1.

To:
The Secretary to Government
Public Works Department.
Madras.

41381 No.4267 G1/53-6 dated 19---5---1954

Sir,

Ports - Mangalore - Detention of sailing vessels "Hemavauty" and "Batelprasad" - Government Memo No.10874-F/54-1 P.W. dated 14-5-54. p49 ante

SPL. ASST. SECRETARY TO GOVERNMENT
21 MAY 1954
PUBLIC WORKS DEPARTMENT

With reference to the Government Memo cited, I forwar herewith a copy of endorsement from the Port Officer, Mangal No.3537/53-3 dated 27-3-54 on the above subject. The cases relating to the sailing vessels "Hemavathy" and "Batelprasad stand posted to 5-6-54 and 29-5-54 respectively for trial.

p52 ante

Yours faithfully,

State Port Officer.

Encl:1.

PWD (F1)

AT/20

A.R. till 25-6-54.

p.t.o.

21/5/54 25.5.54 25.5.54

Letter Ref. No.1401/53-54 dated 25-3-54 from the Government Pleader Sri B.Gangadhar Das, Mangalore to the Port Officer Mangalore.

Mangalore Port - Detention of sailing vessel Hemavathy and Betalprasad - Date of posting of the case intimated O.S.Nos.13 and 14/54 on the file of the District Munsiff of Mangalore.

I have to state that the above mentioned O.P. No.13/54 on the file of the District Munsiff of Mangalore stands posted to 5-6-54 for trial and O.S.No.14/54 on the file of the District Munsiff of Mangalore stands posted to 29-5-54 for trial. Please send the connected papers to me by that date so as to get ready in the suit.

No.3537/53-30

Copy submitted to the Director General of Shipping Bombay through the Principal Officer, Mercantile Marine Department, Madras for information.

L.G.Hardas,
Port Officer.

Mangalore, 27-3-54.
Copy to the State Port Officer Madras for information etc.

(True Copy)

State Port Officer

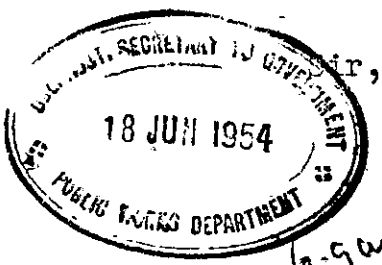
10874/54 '53

From:
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

48433

To
The Secretary to Government,
Public Works Department,
Madras.

No.4267 G1/53-7 dated 16th June 1954.



Sir,

Ports - Mangalore - Detention of sailing vessels "Hemavanty" and "Batelprasad" - Government Memo No.10874 P/54-1.P.W. dated 14-5-54 and my letter to Government No.4267-G1/53-6 dated-19-5-54.

In continuation of my letter cited, I forward herewith for information a copy of letter No.3537/53-36 dated 1-6-54 of the Port Officer, Mangalore addressed to the Director General of Shipping, Bombay on the above subject. The two cases relating to the above matter stand posted to 5-6-1954 and 14-7-54 respectively for enquiry.

Yours faithfully,

State Port Officer.

p.t.o.

52

184

Copy of letter No.3537/53-36 dated 1-6-54 from the Port Officer Mangalore to the Director General of Shipping, Bombay.

Mangalore Port - Detention of sailing vessels Batel Prasad and Hemavanthy - O.S.No.13/54 and 14/54 on the file of the District Munsiff, Mangalore - Progress report.

The above suit O.S.No.13/1954 and 14/1954 stand posted to 5-6-1954 and 14-7-1954 for enquiry.

(True Copy)

for State Port Officer

22/4.8

55 PW.D.(FI)

Memo. No. 10874 F/54-2 dt 3-8-54.

Pub- Navigation - Detention of sailing vessels "Hemawanty" and "Batalprasad".

From the S.P.O. letter No. 4267 F/53-7 dt 16.6.54.

The S.P.O. is requested to make the present stage of the matter

2.8.54

Dd 5.8.54

to the S.P.O.

Dd 1/6/M AM 2.8.54.

12 '54 57

From:
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

To:
The Secretary to Government,
Public Works Department,
Madras.

No.4267 G1/53-9 dated 7th August 1954.

Sir,

Port - Mangalore - Detention of sailing vessels "Hemavanty" and "Betalprasad" - O.S.Nos.13 and 14 of 1954 - Government Memo No.10874 F/54-2 P.W. dated 3-8-54.

--

In continuation of my letter to Government No.4267 G1/53-7 dated 16-6-54, I have to state that the above suits stand adjourned to 10-9-54 for enquiry - vide Mangalore Port Officer's letter No.3537/53-41 dated 29-7-54 addressed to the Director General of Shipping, Bombay, copy enclosed.

Yours faithfully,

State Port Officer.

A+/9.

PWD (Fi)

p.t.o.

Filed.
AR. Hill 1.10.54.

Copy of letter No.3537/53-41 dated 29-7-54 from the Port Officer Mangalore to the Director General of Shipping, Bombay. Thro' Principal officer Mercantile Marine dept, Madras.

Mangalore - Detention of sailing vessels Betalprasad and Hevanthy - O.S.No.13 and 14 of 1954 on the file of the District Munsiff Mangalore - Progress report.

The above suits stand adjourned to 10-9-1954 for enquiry.

(True Copy)

State Port Officer.

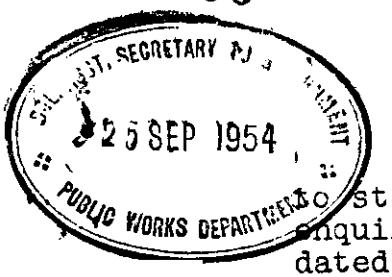
From:
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

To:
The Secretary to Government,
Public Works Department,
Madras.

No.4267 G1/53-10 dated 23rd September 1954.

Sir,

75235



Mangalore Port - Detention of sailing vessels "Hamavanthy" and "Betalprasad" - O.S.No.13 and 14 of 1954 on the file of the District Munsiff, Mangalore - Government Memo No.10874 F/54-2 P.W. dated 3-8-54 and my letter to Government No.4267 G1/53-9 dated 7-8-54.

In continuation of my letter to Government cited, I have to state that the above suits stand posted to 22-10-54 for enquiry - vide Mangalore Port Officer's letter No.3537/53-42 dated 11-9-54 addressed to the Director General, Bombay, copy enclosed.

Yours faithfully,

State Port Officer.

PWD (F.)

AR. Kll 15.11.54.

AT/24.

p.t.o.

From the Port Officer, Mangalore.
To the Director General of Shipping, Bombay. {Thro' The Principal Officer, Meramba Marine Dept, Madras.
No.3537/53-42 dated.11-9-54.

Mangalore Port - Detention of Sailing vessels Betalprasad and Hemavanthy - O.S.No.13 and 14 of 1954 on the file of the District Munsiff, Mangalore - Progress report .

--

The above suit O.S.No.13 and 14 of 1954 stand posted to ~~22-10~~-10-1954 for enquiry.

(True Copy)

State Port Officer

From:
L.H.Carnish Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

To:
The Secretary to Government,
Public Works Department,
Madras.

108/14/54 61

86212

ASST. SECRETARY TO GOVERNMENT
PUBLIC

No. 3635-G1/54-1 dated 6th November 1954.

Sir,

Sub:-Mangalore Port - Detention of sailing vessels "Betalprasad" and "Hemavanthy" - O.S.No.13 and 14 of 1954 on the file of the Dist.Munsif, Mangalore - Progress report.

Ref:-Government Memo No.10874-F/54-2,P.W., dated 3-8-54 and my letter to Government No.4267-G1/53-10, dated 23-9-1954.

In continuation of my letter to Government cited, I have to state that the above suits stand posted to 8-12-1954 for enquiry - vide Mangalore Port Officer's letter No.3537/53-43, dated 28-10-54 addressed to the Director-General of Shipping, Bombay, copy enclose

Encl:-
Copy of Port Officer, Mangalore's letter dated 28-10-54.

Yours faithfully,

State Port Officer.

PWD(F1)

MR.6.

Further report may be awaited till 25.12.54.

15.11.54

From the Port Officer, Mangalore.
To the Director-General of Shipping, Bombay.
Through the Principal Officer, Mercantile Marine Department, Madras.
No.3537/53-43 dated 28-10-1954.

Mangalore Port - Detention of sailing vessels Betalprasad and Hemavanthy - O.S.No.13 and 14 of 1954 on the file of the Dist. Munsif Mangalore - Progress report.

The above suits stand posted to 8-12-1954 for enquiry.

Copy to the Principal Officer, Mercantile Marine Dept., Madras.
Copy submitted to the State Port Officer, Madras.

/True Copy/

MR.6.

State Port Officer.

From:
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

To:
The Secretary to Government,
Public Works Department,
Madras.

97030 No.3635 G1/54-2, dated 15th December 1954.

Sir,

Sub:- Mangalore Port - Detention of sailing vessels "Botal-prasad" and "Hemavanthy" - O.S.No.13 and 14 of 1954 in the file of the District Munsiff, Mangalore - Progress report.

Ref:- Government Memo No.10874 F/54-2, P.W., dated 3-8-54 and my letter to Government No.3635 G1/54-1, dated 6-11-54.

SECRETARY TO GOVERNMENT
13 DEC 1954
PUBLIC WORKS DEPARTMENT

In continuation of my letter to Government cited, I have to state that the above suits stand posted to 17-1-1955 for enquiry - Vide Mangalore Port Officer's letter No.3537/53-44, dated 9-12-54 addressed to the Director General of Shipping, Bombay, copy enclosed

Yours faithfully,

State Port Officer.

P.15.

Encl. 1 copy of Mangalore P.O's letter.

PWD(F1) p.t.o.

further report may be awaited till 5.2.55.

10.12.54

From the Port Officer, Mangalore,
To the Director General of Shipping, Bombay, Thro' the Principal Officer,
No.3537/53-44, dated 9-12-54. Mer. Marine Department, Madras.

Mangalore Port - Detention of Sailing vessels Betalprasad and Homavanthy - A.S.No.13 and 14 of 1954 on the file of the District Munsiff, Mangalore - Progress report.

The above suits stand posted to 17-1-1955 for enquiry

Copy submitted to the State Port Officer, Madras. -:

(True copy)

State Port Officer.

25/7.2

67/ P.W.D.(Fi)

Memo. no. 10874 F/54-3 dt. 5.2.55.

Pobs. - Mangalore - Detention of sailing vessels "Hemavathy" and "Balalprasad".

From the S.P.O. Letter no. 3635 gl/54.2 dt. 15.12.54.

The S.P.O. is requested to note the present stage of the matter.

M
5.2.55

To the S.P.O.
CENTRAL DESPATCH BRANCH 4
Dated 5.2.55
4.2.55
9/2/55. Section's Initials.

From;
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras-1.

14828

To:
The Secretary to Government,
Public Works Department,
Madras-

No.3635 G1/54-4 dated 22nd February 1955

Sir,

Port - Mangalore - Detention of sailing vessels "Hemavanthy" and "Batalprasad" - Government Memo No.10874 F/54-3 P.W. dated 5-2-55.

--

With reference to the Government Memo cited, I have to state that the cases relating to the above sailing vessels on the file of of the District Munsiff; Mangalore, were taken up on 28-1-55 and completed on 2-2-55. Argument were heard on 15-2-55. Judgment is expected to be delivered within a week.

14328

A further communication will be sent to Government on receipt of a report from the Port Officer, Mangalore.

Yours faithfully,

State Port Officer.

PWD.(F-1)

A.R.Hill 5.4.55

4.3.55

AT/22.

71

From
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras.1.

To
The Secretary to Government,
Public Works Department,
M a d r a s.

22944

No.3635 G1/54-5 Dt. 19th March 1955.

RSS. SECRETARY TO GOVERNMENT
21 MAR 1955
PUBLIC WORKS DEPARTMENT

Sir,

Sub: Ports - Mangalore - Detention of sailing vessels. 'Hemavanthy' and 'Betalprasad' O.S.Nos. 13 & 14 of 1954.

Ref: Correspondence resting with my letter to Government No.3635 G1/54-4 dated 22.2.1955.

--o--

In continuation of my letter to Government cited, I have to state that the above mentioned suits on the file of the District Munsiff of Mangalore were dismissed with costs. Vide Mangalore Port Officer's letter No.3537/53-48 dated 9.3.1955 addressed to the Director General of Bombay. Copy enclosed.

Encl: 1 (one)

State Port Officer.

P.T.O

72

Copy of the letter No.3537/53-48 dt. 9.3.55 from the Port Officer, Mangalore to the Director General of Shipping, Bombay through the Principal Officer, Mercantile Marine Department, Madras.

Mangalore Port - Detention of sailing vessels 'Betalprasad' and 'Hemavanthy' - O.S.Nos. 13 and 14 of 1954 on the files of the District Munsiff of Mangalore - Result intimated.

The above mentioned suits on the file of the District Munsiff of Mangalore were dismissed with costs. The Government Pleader has applied for the certified copy of the decree and judgement and the same will be sent on receipt from Court.

-: True Copy :-

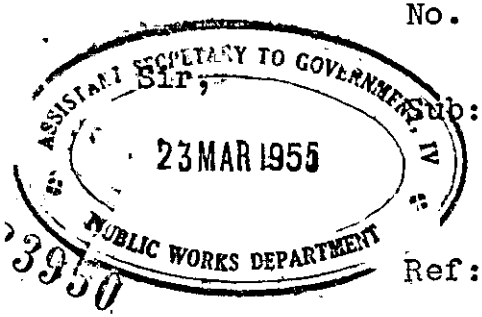
cbk.

State Port Officer.

From
L.H.Cornish Esq.,
State Port Officer,
P.B.No.13,
Madras.1.

To
The Secretary to Government,
Public Works Department,
M a d r a s.

No. 3635 G1/54-6 dated 22.3.1955.



Sir,

Sub: Ports - Mangalore - Detention of Sailing Vessels 'Hemavanthy' and 'Betel Prasad' - GS Nos.13 & 14 of 1954 - Appreciation of the work of the Port Officer by the Director General of Shipping.

Ref: My letter to Government No.3635 G1/54-5 dated 19.3.55.

--o--

In continuation of my letter to Government cited, I forward herewith for favour of information a copy of letter No.3537/53-49 dated 17.3.55 received from the Port Officer, Mangalore on the above subject.

State Port Officer.

Encl: 1. Copy of Mangalore Port Officer's letter with enclosure.

p.t.o

74

Copy of the letter No.3537/53-49 dt. 17.3.55 from the Port Officer Mangalore to the State Port Officer, Madras.

Submitted,

Mangalore Port - Detention of sailing vessels - Batal-Prasad and Hemavanthy - O.S.Nos. 13 & 14 of 1954 on the file of the District Munsiff, Mangalore - Dismisal with cost - copy of para 3 of D.O. letter dated 1.1.1954 communicated - This office letter No.3537/53-48 dt.9.3.55.

In continuation of this office letter cited above, I enclose herewith a copy of para 3 of D.O.No.12 SV(5)/54 dated 1.11.1954 from the Director General of Shipping, Bombay for favour of information

---

Copy of Para 3 of the D.O.No.12 SV(5)/54 dated 1.11. 54 from the Directorate General of Shipping, Bombay.

---

x x x

3. I take this opportunity of expressing my sincere appreciation of the excellent work you are doing in warning vessels for insufficient navigational aids and safety equipment or for overloading. I may add that I have drawn the attention of the Ministry to the work that is being done at Mangalore.

-: True Copy :-

cbk. PWD (Fi) State Port Officer

Pages 71-74 above.

Filed. No file may be closed.

27/3/55 C/S 29/3/55 M 30.3.55

Mang. 10874 F/54-3

30-3-55

Received.

From
The State Port Officer,
Post Box No.13,
Madras.1.

To
The Secretary to Government,
Public Works Department,
M a d r a s.

No. 2220 G1/55-1 Dt. 24.8.55.

SECRETARIAT TO GOVERNMENT
5867
25 AUG 1955
PUBLIC WORKS DEPARTMENT

Sir,

Sub: Detention of sailing vessels suspected to have been overloaded at the port of Mangalore Suits O.S.Nos. 13 & 14 of 1954 in the file of the District Munsiff of Mangalore - Judgement and Decree.

Ref: Correspondence resting with this office letter to Government No. 3635 G1/54-6 dt. 22.3.55.

In continuation of this office letter cited, I forward herewith for favour of information of Government copies of the decree and judgment in the above suits received from the Port Officer, Mangalore.

Yours faithfully,

(M.L.ADVANI)
State Port Officer.

Encl: copies of decree & judgment (6 sheets)

K7/18.

Filed with Memo. no. 10&24 F/54.39
30.3.55.

In the Court of the District Munsif of Mangalore, South Kanara.
Present: Sri K.Chandrashekara Hegde, B.A., L.L.B.,
District Munsif.
Monday, the 28th day of February, 1955
Original Suit No.13/1954.

Between:
Saul Pandu nee Appu-ayar, son of Pandurang Abalankar) of Goa, sues by his Power of Attorney Holder Sri N. Datta Nayak, son of Rangappa Nayak, Merchant, Bunder, Mangalore.) Plaintiff.

and

P. G. Heridas, son of (father's name not known) Port Officer, Mangalore Port, Bunder, Mangalore.) Defendant.

Suit to recover (1) a sum of Rs.390.0.0 being the damages and loss sustained by the Plaintiff on account of the illegal detention of the plaintiffs country craft called 'Betal Prasad' and (2) a sum of Rs.2.0.0 being the cost of registered notice.

The value of the relief is claimed at Rs.392.0.0.

The cause of action for this suit arose on 18.11.1953 and subsequently in Mangalore Town within the jurisdiction of this cour

Plaint presented on 12.12.1953 and represented on 12.1.1954.

Decree: This suit coming on for trial on the 28th day of January 1955 and for further trial on the 1st and 2nd days of February 1955 and for arguments on the 15th day of February 1955, before me, in the presence of Sri M.V.Kamath, advocate for the plaintiff and of Sri B.Ganapadar Das, Advocate and Government Pleader for the defendant and having stood over till this day for consideration, th this Court doth hereby order and decree that the plaintiffs suit be and the same hereby is dismissed and that the plaintiff do pay to the defendant a sum of Rs.31.3.0 for # costs of suit, awarded to the defendant, with interest thereon at the rate of 5½% p.a from # t is date till payment.

Costs of Suit.

	Plaintiff.	Defendant.
	Rs. As. Ps.	Rs. As. Ps.
1. Stamp on plaint.	44.15. 0	0. 0. 0
2. Stamp on vakalath.	1. 0. 0	0. 0. 0
3. Pleader's fee	25. 0. 0 (as certified)	27. 7. 0
4. Witness allowance.	0.14. 0	
5. Process fees.	3. 8. 0	
6. Stamp on petitions.	3.12. 0	3.12. 0
7. P.W.fees.	0. 7. 6	0. 0. 0
Total.	79. 8. 6	31. 3. 0

Given under my hand and the seal of the Court, this 28th day of February, 1955.

(Sd) K. C. Hegde,
District Munsif.

In the Court of the District Munsif of Mangalore, South Kanara.
Present: Sri K. Chandrashekara Hegde, B.A., L.L.B.,
District Munsif.
Monday, the 28th day of February, 1955.
Original Suits Numbers 13 14/1954.

Original Suit No.13 of 1954.

Between:
Saul Pandranga Abalankar, By special Power of attorney) holder Sri N.Datta Naik.) Plaintiff.

and

P. G. Heridas Defendant.

Original

Original Suit No. 13 of 1954.

Between:
Raghunatha Malya Bandkar by Special Power of Attorney holder Sri J.S.Pais.

and) Plaintiff.

R. G. Haridas

Defendant.

These suits coming on for trial on the 28th day of January 1955 and for further trial on the 1st and 2nd days of February 1955 and for arguments on the 15th day of February 1955 before me, in the presence of Sri M.V.Kamath, advocate for the plaintiff and of Sri B.Gangadhar Das, Advocate and Government Pleader for the defendant in both the suits and having stood over till this day for consideration, the Court delivered the following

C o m m o n J u d g m e n t

ORIGINAL SUIT NO. 13 of 1954:

This is a suit to realise (1) a sum of Rs.390.0.0 being the loss suffered by the plaintiff on account of the illegal detention of his country craft called Bâtal Prasad and (2) a sum of Rs.2.0.0 being the cost of registered notice.

2. The material plaint allegations are: that the plaintiff is the tendal of the Vessel called 'Batal Prasad'. In about the 15th ~~Mx~~ of November 1953, the plaintiff came to Mangalore with his vessel 'Batal Prasad' and the same was loaded with tiles with a capacity of 30000 tiles tiles which is the usual capacity of the said vessel. The loading was complete on 17.11.1953 and immediately thereafter the plaintiff applied to the defendant for the grant of necessary port clearance ~~xfxrthxxxx~~ for the said vessel to sail from Mangalore Port to Marma Goa Port and that the said application was filed on 18.11.1953 at 10 A.M in the office of the defendant. The defendant ~~in~~ instead of complying with request of the plaintiff, illegally detained the said vessel for 2 days and on 19.11.1953 issued an order stating that the vessel was carrying excess cargo and therefore considered unseaworthy. The said order passed by the defendant was illegal and ultra vires of his powers. The said order was actuated by malice and was not issued bona fide. On account of the non grant of the port clearance, the vessel had to be detained in Mangalore Port for 6 days and the plaintiff has sustained damages at the rate of Rs.60.0.0 per day on account of the maintenance of the crew of the vessel and other charges. The plaintiff under protest unloaded 3000 tiles from the ~~xt~~ said vessel and left the Mangalore port after getting port clearance for the remaining cargo. On account of the said action of the defendant, the plaintiff lost freight on 3000 tiles at the rate of Rs.27/- per 1000 and also had to incur the unloading charges for the 3000 tiles that were un loaded from the vessel. The plaintiff is entitled to the damages suffered by him. Hence the suit.

3. The defendant has filed a statement contending: that on receipt of the application for port ~~xxxxxx~~ clearance certificate, he had to get certain particulars regarding the vessel verified and in the course of his official duties, he got the report that the said vessel was over-loaded and it was unseaworthy. He had ample powers and authority to detain the vessels which are unseaworthy under the provisions of the Indian Merchants Shipping Act. He had absolutely no malice and his acts are prefectly bona fide. He had done those acts only in due discharge of his duties as a Port Officer. If the plaintiff had complied with the provisions and rules made under the Indian Merchants Shipping Act, there was no need for the defendant to detain the said vessel nor would have issued an order refusing port clearance. He had ordered the plaintiff to reduce 3000

tiles

tiles, as this action would alone render the vessel seaworthy and he is not at all responsible for the time taken by the plaintiff to comply with these orders. This defendant is not at all responsible or liable to pay any damages. The notice given by the plaintiff is not in accordance with Section 80 C.P.C. and the suit which has been filed on the strength of the said illegal notice is liable to be dismissed. The suit is bad as it is filed by the Power of Attorne holder on behalf of the plaintiff without complying with the necessary requirements of law. The suit is not maintainable under Section 295 of the Indian Merchants Shipping Act and is liable to be dismissed. The suit is liable to be dismissed with compensatory costs.

4. The following issues were framed for trial:

1. Whether the defendant illegally detained the vessel for 6 days?

2. Whether the vessel was carrying excess cargo and hence unsea-worthy as alleged by the defendant?

3. Whether the order passed by the defendant is illegal and ultravires of his powers or whether he had ample powers and authority to issue such orders and to detain the vessel under the provisions of the Indian Merchant Shipping Act of 1923?

4. Whether the defendant has done everything bona fide in the due discharge of his duties as a Port Officer?

5. Whether the plaintiff had not complied with the provisions and the Rules made under the Indian Merchant Shipping Act?

6. Whether the defendant is liable for damages in unloading 3000 tiles at the rate of Rs.27.0.0 per thousand and whether the defendant is liable for costs incurred for the maintenance and other charges of the crew of the vessels?

7. Whether the notice issued by the plaintiff is in accordance with the law and whether the suit is bad for notice under Section 80 of C.P.C. and is liable to be dismissed?

8. Whether the suit is not maintainable under Section 295 of the Indian Merchant Shipping Act?

9. Whether the defendant is entitled to compensatory costs or the suit is liable to be dismissed with compensatory costs?

10. To what relief the parties are entitled?

ORIGINAL SUIT NO. 14 of 1954:

5. This is a suit to recover (1) a sum of Rs.388.0.0 being the loss incurred by the plaintiff on account of illegal detention of his country craft called Hemavanthi and (2) a sum of Rs.2:0.0 being the cost of registered notice.

6. The allegations in the plaint are similar to those found in the plaint in O.S.No.13 of 1954 except that the load in this case was 27000 tiles and the plaintiff had to remove 4000 tiles.

7. The averment in the written statement are similar to those found in the written statement in O.S.No.13 of 1954.

8. The following issued were framed for trial:

1. Whether the defendant illegally detained the suit vessel for 6 days?

2. Whether the vessel was carrying excess cargo and hence unsea-worthy as alleged by the defendant?

3. Whether the order passed by the defendant is illegal and ultra vires of his powers or whether he had ample powers and authorit

to

to issue such orders and to detain the vessel under the provisions of the Indian Merchant Shipping Act of 1923?

4. Whether the defendant has done everything bona fide in the due discharge of his duties as a Port Officer?

5. Whether the plaintiff had not complied with the provisions and the rules made under the Indian Merchant Shipping Act?

6. Whether the defendant is liable for damages in unloading 4000 tiles at the rate of Rs.19.0.0 per thousand and Whether the defendant is liable for the costs incurred for the maintenance and other charges of the crew of the vessel?

7. Whether the notice issued by the defendant is in accordance with the law and whether the suit is bad for notice under Section 80 of C.P.C. and liable to be dismissed?

8. Whether the suit is not maintainable under Section 295 of the Indian Merchant Shipping Act?

9. Whether the defendant is entitled to compensatory costsor the suit is liable to be dismissed with compensatory Costs?

10. What relief the parties are entitled?

9. The parties have filed a memo praying that the evidence recorded in O.S.No.13 of 1954 may be treated as evidence in O.S. No.14 of 1954 also.

10. Issues Nos.1 to 3 in O.S.Nos.13/1954 and 14/1954: The suit vessels in O.S.No.13 of 1954 is called 'Betal Prasad'. The suit vessel in O.S.No.14 of 1954 is called 'Hemavanthi'. Both these vessels came to Mangalore Port in November 1953. After they arrived at Manglore Port, Betal Prasad was loaded with 27000 tiles and some other commodities and applied for port clearance certificate on 18th of November 1953. The vessel Hemavanthi was loaded with 26000 tiles and some other materials, and also applied for port clearance certificate on the 18th of November 1953. When both the vessels applied for port clearance certificate, the Wharf Supervisor was directed to check the seaworthiness of the two vessels. The Wharf Supervisor has put up a report to the effect that the Betal Prasad carried 614 tons of cargo as against the registered tonnage of 48.94. It is further seen from the report of the Wharf Supervisor (D.W.2) that the vessel was having a free board of 19 inches though she should have a free board of 26 inches. These reports are seen in Exhibits B8, B14 and B16. In view of this report by the Wharf Supervisor, the defendant ordered that the load should be lightended. Exhibit B17 is the order passed by the defendant. Similarly, the Wharff Supervisor has put up reports to the effect that the vessel Hemavanthi carried 52 tons of cargo as against her registered tonnage of 28.85 and that the vessel was having a free board of 10 inches though she is required to have a free board of 19 inches as per schedule. On account of these reports of the Wharf Supervisor, the defendant directed that vessel Hemavanthi should also lighten he load. These orders were communicated to the plaintiffs on 19.11.1953as seen from Exhibits A11 and Exhibit A25. In spite of the orders directing the plaitiff in both the suits to lighten the load, the plaintiffs have not lightened the same till 23.11.1953. On 23.11.1953, both the vessels lightened the ~~maximum~~ load as directed by the defendant and infrmed this fact to the defendant who made a personal inspection on the 24th at 9 A.M and satisfied himself that there was required free board regarding both the vessels and then passed orders as per Exhibits B22 and B23 directing the issue of port clearance certificates.

11. The plaintiffs in both the suits now contend that both the suit vessels were not carrying excess cargo and the cargo that was loaded to both the vessels were of the normal cargo which they have been carrying, and that the defendant illegally detained the vessels for 6 days and the action of the defendant was not

bona fide and therefore the plaintiffs are entitled to the damage claimed.

12. The first question is whether the suit vessels were over loaded. The registered tonnage of Betal Prasad is 48.04 tons. It was loaded with 27000 tiles apart from other goods. It is seen from the standard weight given in Exhibit B3 and also the admission of P.W.1 that 1000 tiles weigh 2 tons. At this rate, the total weight of 27000 tiles is 54000 tons which is more than the registered tonnage of the vessel. Similarly the registered tonnage of the vessel Hemavanthi is 28.85 tons and it was loaded with 26000 tiles apart from other commdities. The total weight of 26000 tiles comes to 52 tons. The vessel Hemavanthi is also over loaded in the sense that the weight of the cargo was more than the registered tonnage.

13. It is argued on behalf of the plaintiffs that the registered tonnage is not the capacity of the vessel but the waight of the vessel. In view of the evidence of D.W.s 1 and 2, there can be no doubt that the registered tonnage is the capacity of the vessel to carry the said weight and it cannot be the weight of the said vessel. So both the suit vessels were carrying excessive loads than their registered tonnage.

14. It is contended on behalf of the defendant that the suit vessels have got capacity much more than their registered tonnage. It is true that the vessels of the type of the suit vessels have got capacity much more than their registered tonnage and even the defendant sent up a report (Exhibit B5) to the Principal Officer, Mercantile Marine Department, Madras stating these facts. It is also in evidence that these suit vessels were carrying goods much more than their registered tonnage in prior years. The defendant refused to give port clearance certificate to the suit vessels not because they were carrying goods much more than their registered tonnage but in view of the circular issued by the Office of the Director General of Shipping, Bombay. Exhibit B3 is the said circular. This circular was issued on 28.9.1953. Under clause 6 of the Circular, Exhibit B3, it is stated that it is difficult to lay down any hard and fast rule about the dead weight that a vessel may carry in proportion to their registered tonnage and a tentative formula is suggested as a provisional measure only which may be applied by the Scrutinising Officer in cases where over loading is suspected. Again, the attention of the Port Officers are invited to para 4(h) of the said Circular on 28.9.1953 as per Ex.B4. Under the formula given in Exhibit B3, a vessel of the length of 20 feet should have a free board clearance of 12 inches, and this is the minimum clearance for all sea going vessel. If the vessels' length is over 20 feet, up to 60 feet, half an inch for every foot of length in excess of first 20 feet must be added to free board clearance. If this formula is applied to the suit vessels, the Betal Prasad must have a free board of 26 inches, whereas the free board of Betal Prasad was 19 inches when inspected by the Wharf Supervisor. This is seen from the report of the Wharf Supervisor which is marked as Exhibit B15. This circular Exhibit B3 was issued in 1953 and the Port Officers were directed to apply the principles embodied in the circular. The defendant in fact applied this principle and found out through his Wharf Supervisor that Betal Prasad was unseaworthy as it was having only 19 inches of free board instead of 26 inches. D.W.2, the then Wharf Surarvisor swears that the measurements given by him in Ex.B16 are correct. I see no reason to disbelieve his evidence so far as the free board, is concerned. Similarly the vessel Hemavanthi should have a free board of 19 inches if the formula embodied in Exhibit B3 is applied. But it was having a free board of 10 inches as seen from the report Exhibit B18. D.W.2 also speaks to the measurements given in Ex. B18 as correct. I accept his evidence as correct so far as free board given in Exhibit B18 is concerned. It is clear from the reports of the Wharf Supervisor to which I have already referred to that both the suit vessels were unseaworthy in view of the formula given in Exhibit B3. I therefore hold under issue No.2 that both the suit vessels were carrying excess cargo and hence unseaworthy as alleged by the defendant.

15. Then the next question is whether the defendant illegally detained the suit vessels for 6 days. I have already held under issue No.2 that the suit vessels were carrying excess cargo and hence unseaworthy.

unseaworthy. When the vessel was carrying excess cargo, the Port Officer was entitled to detain the vessel and refuse clearance certificate under Section 232 of the Indian Merchant Shipping Act. Therefore I hold under issue No.1 that the refusal of the defendant to give clearance certificate and in thereby detaining the suit vessels is not illegal and his action was proper and legal under the circumstances.

16. It is contended on behalf of the plaintiffs that the ~~defendant~~ defendant had no authority or power to detain the vessels under the provisions of the Indian Merchant Shipping Act. This contention cannot be accepted in view of the provisions in Section 232 of the Indian Merchant Shipping Act, wherein it is clearly provided that an officer is entitled to detain a vessel by reason of her defective condition equipment or machinary, or by reason of over loading or improper loading. Therefore I hold under issue 3 that the order passed by the defendant is not illegal and ultra vires of his powers and that he had ample powers and authority to issue orders which he did and to detain the vessel under the provisions of the Indian Merchant Shipping Act of 1923.

17. Issues Nos.4 and 8 in O.S.Nos.13/1954 and 14/1954: The next question is whether the defendant has done these actions bona fide in the due discharge of his duties as a Port Officer. It is not the case of the plaintiffs that the defendant has got any enmity of malice towards the plaintiff. It is the case of the plaintiffs that they need not prove malice if they are able to show that their civil rights have been infringed by the defendant. It is true that, if the plaintiffs show that their civil rights have been illegally interfered with, and on that ground they have suffered damages, than they are entitled to claim damages. But if an Officer does certain acts in due discharge of his duties bona fide believing that he is entitled to do such acts, he is protected under Section 295 of the Indian Merchant Shipping Act. Therefore it is necessary to see whether the defendant has done everything in this case bona fide in the due discharge of his duties as a Port Officer.

18. The defendant was transferred to this Mangalore Port and took charge on 19.10.1953. When he took charge, the circular Exhibits B1 to B4 were already received by the office. On account of Exhibits B3 and B4, a representation was made to him after he took charge. In view of the said representation, the defendant made a report as per Exhibit B5 to the Principal Officer, Merchantile Marine Department, Madras. In Exhibit B5, the defendant has pleaded on behalf of the owners of country crafts like the suit vessels. In Exhibit B5, the defendant made it clear that the vessels like the suit vessels and other vessels due to their peculiar type of construction are able to carry 30 to 100 per cent of excess cargo over their registered tonnage, consequently allowing a lesser free board than what is prescribed in the tentative formula in Exhibit B3. He has also stated that there are records in his office to show that the vessels carried some quantity of cargo or even more during the previous voyages, in previous years. Therefore the defendant sought instrucations whether he should follow the tentative formula given in Exhibit B3. He has also noted in his report that if the principle embodied in the tentative formula is followed, it would cause hardship and there is considerable responsibility for the detaining Officer. The defendant had almost made an earnest appeal to the Principal Officer, Merchantile Marine Department, Madras not to put into practice the tentative formula. As he did not get a reply to Exhibit B5, he has sent a telegram as per Exhibit B6, to which he received a reply as per Exhibit B8 wherein the defendant was asked to follow strictly the circular. It is seen from Ex.B5 that the defendant was rather hesitating to apply the tentative formula given in the circular, Exhibit B3, but he was asked to strictly follow it. Under these circumstances, there is little doubt that the defendant was acting bona fide in the due discharge of his duties as a Port Officer. He had no malice of any kind against the plaintiffs or any one else.

19. Then it is contended that even if the defendant were to obey the circular, Exhibit B3, he was bound to inform the fact of detention to his superiors. It is true under clause 9(a) that the Port Officers are directed to inform the fact of detention to his superiors. But the Port Officer must use his discretion, however, to contact the Principal Officer by letter or by telegram according to the urgency of the situation. But in every case if a tindal or agent of the vessel offers to pay telegram charges both ways, the Principal Officer may be contacted by expresss telegram. In this ~~xxxxxxxxx~~ case, it is not the case of the plaintiffs that they have offered to give telegram charges to the defendant. In this case, the defendant used his discretion and sent a letter on 21.11.1953 to the Principal Officer, Mercantile Marine Department, Madras, informing about the detention. The Port clearance was refused on 19th. 20th was a Government Holiday. The defendant has taken the earliest opportunity to send a letter on the 21st. So the plaintiffs cannot presume any malice even in that regard. The defendant complied with the provisions of the circular to its very letter as directed by his superiors though he was hesitating to apply the provisions of the circular. There can be no doubt that the defendant bona fide acted in good faith in refusing to give clearance certificate. I therefore hold under these issues that the defendant has done everything bona fide in the due discharge of his duties as Port Officer and therefore the suit is not maintainable under section 395 of the Indian Merchant Shipping Act which gives protection to a person for anything done under the Indian Merchant Shipping Act in good faith. These issues are answered accordingly.

20. Issue No. 5 in O.S.Nos.13/1954 and 14/1954: I have already indicated above that the plaintiffs in both the suits have loaded their vessels against the provisions in the circular Exhibit B3. That is to say the plaintiffs have over loaded their vessels to such an extent that a free board as contemplated under Exhibit B3 was not allowed. The circular Exhibit B3 was issued under the provisions of the the Indian Merchant Shipping Act. It follows that the ~~plaintiff~~ plaintiffs have not obeyed the circular and thereby they have not complied with the provisions and rules made under the Indian Merchant Shipping Act. I therefore hold under this issue that the plaintiff had not complied with the rules and provisions of the Indian Merchant Shipping Act.

21. Issue No.6 in O.S.Nos.13/1954 and 14/1954: In view of my findings on the foregoing issues, the defendant is not liable for damages in unloading tills or costs incurred for maintenance and other charges of the crew of the vessel as claimed in the plaint. These issues are answered accordingly.

22. Issue No.7 in O.S.Nos.13/1954 and 14/1954: It is contended on behalf of the defendant that the plaintiffs have not issued notices as contemplated under section 80 C.P.C. and therefore the suit is bad for want of a notice under Section 80 of C.P.C. The plaintiffs rely upon Exhibits A9 and A23 as notices under Section 80 C.P.C. Exhibit A9 is the copy of the notice issued by the plaintiffs lawyer in O.S.No.14 of 1954 on 20.11.1953. Exhibit A23 is the copy of the ~~xx~~ lawyer's notice sent on behalf of the plaintiff in O.S.No.13/1954 on 23.11.1953. These notices were issued before the clearance certificate was given to the suit vessels. Under Exhibits A9 and A23, the defendant was called upon to grant port clearance certificate within 24 hours on failing which the plaintiffs threatened to institute legal ~~xxxx~~ proceedings against the defendant for damages. So Exhibits A9 and A23 was not a notice under Section 80 C.P.C claiming damages for detaining the vessels for 6 days. They are notices calling upon the defendant to grant port clearance certificates and they are not notices claiming damages which are now claimed in the plaints. The damages now claimed relate to the period from 9.11.1953 upto 26.11.1953. The notices were issued on 20.11.1953 and 23.11.1953. Therefore the plaintiffs have not issued notices under Section 80 C.P.C claiming damages now claimed in the plaints. The defendant as a Public Officer refused port clearance certificates in the due discharge of his duties as a Port Officer. Under Section 80 C.P.C a notice is mandatory even to file a suit against a public officer in respect of any act purported to be done by such officer in his official capacity. As the plaintiffs have not issued notices giving two month's time, the suit is bad under Section 80 C.P.C. I therefore hold under these issues that

the

the notice issued by the plaintiffs as per the original of Exhibits A9 and 423 are not in accordance with law and the suit is bad for a notice under Section 80 C.P.C and is liable to be dismissed on that ground alone.

23. Issue No.9 in O.S.Nos.13/1954 and 14/1954: No doubt the suits to some extent, harass the defendant. I do not think that there is any special ground to grant compensatory costs to the defendant. Therefore I hold under these issues that the defendant though entitled to costs of suit, he is not entitled to compensatory costs. These issues are answered accordingly.

24. Issue No.10 in O.S.No.13/1954: In the result, the suit fails and is dismissed with costs of the defendant.

25. Issue No.10 in O.S.No.14/1954: In the result, the suit fails and is dismissed with the costs of the defendant.

Dictated to the shorthand writer, transcribed by him, revised by me and pronounced in open court, this the 28th day of February 1956.

(Sd) K. C. Hegde,
District Munsif.

Appendix of Evidence:

Plaintiffs Exhibits:

A1.	23.11.1953.	Receipt for boat hire for unloading 4000 tiles.
A2.	21.11.1953.	Copy of letter sent to the Secretary Public Work Department, Madras by Sri J.S.Pais.
A3.	21.11.1953.	Copy of telegram sent to J.S.Pais by the Secrete Public Works, Madras.
A4.	do	do do
A5.	23.11.1953.	Copy of letter sent to Port Officer by J.S.Pais.
A6.	23.11.1953.	Reply letter sent to J.S.Pais by the Port Officer.
A7.	23.11.1953.	Copy of letter addressed by Plaintiff in O.S. No.14 of 1954 to Port Officer.
A8.	24.11.1953.	Copy of letter addressed by do in O.S.No.14 of 1954 to do.
A9.	20.11.1953.	Copy of notice sent on behalf of plaintiff in O.S.No.14 of 1954 to the Port Officer.
A10.	23.11.1953.	Acknowledgement receipt, passed by the Port Officer.
A11.	19.11.1953.	Order of the Port Officer issued to Tindel Raghunath.
A12.	24.11.1953.	Receipt for boat hire for unloading 4000 tiles.
A13.	20.6.1946.	Confidential letter from Sri V.N.Kudva, Secretary to Government of Madras addressed to Secretary the Kanara Vessels Broker's Association.
A14.	18.11.1953.	Copy of Circular by the Port Officer to Vessel Owners.
A15.	7.12.1953.	Memo sent to Sri J.S.Pais by the Port Officer.
A16.	3.12.1953.	Copy of letter addressed to Port Officer by Sri J.S.Pais.
A17.	17.12.1953.	Warning notice sent to plaintiff by Port Officer.
A18.	1. 1.1954.	Telegram sent to J.S.Pais by plaintiff.
A19.	21.11.1953.	Copy of telegram by State Port Officer, Madras to Sri J.S.Pais.
A20.	24.11.1953.	Special Power of Attorney granted to Sri J.S.Pais by Tindel Raghunath Xxx Bhiva Bandkar.
A21.	18.11.1953.	Copy of circular issued by the Port Officer to vessel owners.
A22.	23.11.1953.	Copy of letter sent by Tindel Sonle Pandurang

to the Port Officer, Mangalore.

A23.	20.11.1953.	Copy of lawyer's notice sent to defendant.
A24.	20.11.1953.	Acknowledgment slip of defendant.
A25.	19.11.1953.	Order from the Port Officer, Mangalore to Tindel Sanle Pandurang that Port clearance cannot be granted.
A26.	25.12.1953.	Letter from the Port Officer to the Secretary, The Madras Tile Exporters Association, Mangalore.

DEFENDANT'S EXHIBITS:

B1.	-	Extract from the Circular No.10/1945 issued by the Mercantile Marine Department _ re _ Detention of country crafts.
B2.	23.8.1930.	Notification on 99M _1(2)/29 dated 23.8.1930 at page 19 of Regulations of Government relating to Merchant shipping.
B3.	23.9.1953.	Circular No.3.S.V(8) 52 issued by the Office of the Director General of Shipping, Bombay.
B4.	5.10.1953.	Letter from the Principal Officer, Mercantile and Marine Department, Madras.
B5.	26.10.1953.	Letter from the Port Officer No.2888/53/2 to the Principal Officer, Mercantile and Marine Department, Madras.
B6.	12.11.1953.	Copy of telegram to Principal Officer, Madras.
B7.	12.11.1953.	Receipt for having sent the Telegram.
B8.	13.11.1953.	Telegram received from the Principal Officer, Madras.
B9.	18.11.1953.	Certificate of Clearance granted to Vessel Betal Prasad.
B10.	18.11.1953.	Export General Manifest of Betal Prasad.
B11.	18.11.1953.	Certificate of clearance of vessel Homavanthi.
B12.	18.11.1953.	Export General Manifest of vessel Homavanthi.
B13.	28.5.1948.	Circular No.4/48 issued by the Presidency Port Officer, Madras.
B14.	18.11.1953.	Entry in Exhibit B9.
B15.	12.11.1953.	Entry in Exhibit B11.
B16.	18.11.1953.	Entry in Exhibit B9.
B17.	18.11.1953.	Entry in Exhibit B9.
B18.	11.11.1953.	Entry in Exhibit B11.
B19.	18.11.1953.	Entry in Exhibit B11.
B20.	23.11.1953.	Letter from Tindel Raghunath of Vessel Homavanthi.
B21.	23.11.1953.	Letter from Tindel Sanle Panduranga of Vessel Betal Prasad.
B22.	24.11.1953.	Entry 'Permitted' in Exhibit B20.
B23.	24.11.1953.	Entry 'Permitted' in Exhibit B21.
B24.	25.11.1953.	Circular No.3 S.V.(8) 52 issued by the office of the Director General of Shipping, Bombay.
B25.	19.11.1953.	Copy of telegram sent by Dalal Pais, Mangalore to the State Port Officer, Madras.
B26.	23.11.1953.	Letter from the Port Officer, Mangalore to State Port Officer, Madras.
B27.	1.11.1954.	Letter from the Directorate General of Shipping, Bombay to the Port Officer, Mangalore.
B28.	21.11.1953.	Letter from the Port Officer, to the Principal Marine Officer, Madras.

B29.

B29. 24.11.1953. Telegram sent to Port Officer, Mangalore from Bombay.

Witnesses Examined:

For Plaintiff:

1. Sri J.S.Pais.
2. Sri N. Datta Nayak.

For defendant:

1. Sri Mahesh Chander C.
2. Sri R.G.Haridas.

(Id) K.C.H. District Munsif.

141

5376

copied by: x

True copy on 31 pages,

(Sd) xx
Superintendent.

In the court of the District Munsif of Mangalore.

South Kanara District.

Present: Sri K.Chandrasekhara Hegde B.A.,LL.B. Dt. Munsif
Thursday the 25th day of March 54.
Original suit No.13 of 54.

Between: Gaul Panduranga Ahalankar by special power of attorney holder Sri N.Datta Naik. plaintiff

and

R.G,Haridas defendant.

This suit coming on this day for settlement of issues before me in the presence of Sri M.Venkataraya Kamath advocate for the plff. and of Sri B.G.Das, advocate for deft. it is ordered that the following issues be tried.

1. Whether the deft. illegally detained the suit vessels for 6 days?

2. Whether the vessel was carrying excess cargo and hence unseaworthy as alleged by the deft?

3. Whether the order passed by the deft is illegal and ultravires of his powers or whether he had ample powers and authority to issue such orders and to detain the vessel under the provisions of the Indian Merchant Shipping Act of 1923?

4. Whether the defendant has done everything bonafide in the due discharge of his duties as a port officer?

5. Whether plff. had not complied with the provisions and the rules made under the Indian Merchant Shipping Act?

6. Whether the deft. is liable for damages in unloading 3000/ tiles at the rate of Rs.27/ per thousand and whether the deft. is liable for the costs incurred for the maintenance and other charges of the crew of the vessel,

7. Whether the notice issued by the plff is in accordance to the law and whether the suit is bad for notice under section 80 of c.p.c. and liable to be dismissed?

8. Whether the suit is not maintainable under section 295 of the Indian Merchant Shipping Act?

9. Whether the deft. is entitled to compensatory costs or the suit is liable to be dismissed with the compensatory costs?

10. To what relief the parties are entitl d?
and the 5th day of June 54 has been fixed for the trial of this suit and the documents be produced in one month from this date.

Given under my hand and the seal of the court this 25th day of March 54.

Sd. K.C.Hegde.
District Munsif.

22
376

true copy on 3 pages.

copied by

K.Padmanabha,
976
Superintendent.

True Copy-

Madras,
24.8.65.

STATE PORT OFFICER.